

House Bill 55

By: Representatives Williamson of the 112th, Williams of the 148th, Dickey of the 145th,
Wade of the 9th, Ridley of the 6th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance,
2 so as to provide for definitions; to provide for dates; to change terminology; to merge money
3 transmitter and seller of payment instrument licensing and regulation requirements; to
4 provide for restrictions on banking and trust nomenclature; to provide for trust powers; to
5 provide for amendments to articles; to provide for credit union powers; to provide for
6 membership of credit union audit and credit committees; to provide for credit union loans;
7 to provide for credit union dividends; to provide for exemptions from money transmission
8 licensing requirements; to provide for money transmitter requirements; to provide for
9 background checks; to provide for licensing exemptions; to repeal laws relating to
10 international banking corporations and bank agencies; to provide for an exemption to
11 installment loan licensing and regulation; to provide for notice requirements; to provide for
12 installment loan interest calculations; to provide for licensing and regulation of foreign bank
13 offices and agencies; to provide for related matters; to repeal conflicting laws; and for other
14 purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 55

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16

SECTION 1.

17 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is
18 amended by revising paragraphs (21), (24), and (35) of Code Section 7-1-4, relating to
19 definitions relative to financial institutions, as follows:

20 "(21) 'Financial institution' means:

21 (A) A bank;

22 (B) A trust company;

23 (C) Reserved;

24 (D) A credit union;

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

28 (F) Business development corporations existing on April 1, 1975, pursuant to the
29 former 'Georgia Business Development Corporation Act of 1972,' approved April 3,
30 1972 (Ga. L. 1972, p. 798), or organized pursuant to Article 6 of this chapter;

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

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

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

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

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

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

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

- 42 (vi) Code Sections 7-1-111 and 7-1-112, relating to emergency closings and business
 43 restrictions;
- 44 (vii) Paragraph (3) of subsection (a) of Code Section 7-1-394, relating to criteria to
 45 be considered in approving new banks;
- 46 (viii) Code Section 7-1-840, relating to criminal prosecutions; and
- 47 (ix) Code Section 7-1-841, relating to application of Title 16 provisions;
- 48 (I) A bank holding company as defined in Code Section 7-1-605 for the purposes of
 49 Code Sections 7-1-61, 7-1-71, and 7-1-91;
- 50 (J) Banks chartered by states other than Georgia for the purposes of paragraph (10) of
 51 Code Section 7-1-261, relating to agency relationships;
- 52 (K) Federal credit unions for the purposes of Part 6 of Article 2 of this chapter, relating
 53 to deposits, safe-deposit agreements, and money received for transmission, and Article
 54 8 of this chapter, relating to multiple-party accounts; and
- 55 (L) Banks and credit unions chartered by states other than Georgia, national banks,
 56 federal credit unions, and federal savings and loan associations for the purposes of
 57 paragraph (1) of Code Section 7-1-650, provided that such institutions have federal
 58 deposit insurance."
- 59 "(24) 'Net worth' shall have the same meaning as set forth in 12 C.F.R. 702.2 and as
 60 reported in the credit union's most recent call report required to be filed under 12 C.F.R.
 61 741.6. If significant capital changes occur after the filing of the call report which causes
 62 the net worth to increase or decrease by 5 percent or more, then the net worth shall be
 63 immediately recalculated at the time of the capital change and it shall be effective until
 64 the filing of the next call report. Reserved."
- 65 "(35) 'Statutory capital base' means the sum of the common equity tier 1 capital, as
 66 defined by applicable federal law, and the ~~allowance of loan and lease~~ allowances for
 67 credit losses, as defined by applicable federal law or guidance, as reported in the bank's
 68 most recent Consolidated Report of Condition and Income; provided, however, that the

69 department may enact regulations to phase in the revision to this definition for those
70 banks that will have a decreased statutory capital base as of July 1, 2017. If significant
71 capital changes occur after the filing of the Consolidated Report of Condition and Income
72 which causes the common equity tier 1 capital to increase or decrease by 5 percent or
73 more, then the statutory capital base will be immediately recalculated at the time of the
74 capital change and it will be effective until the filing of the next Consolidated Report of
75 Condition and Income."

76 **SECTION 2.**

77 Said title is further amended by revising subsection (b) of Code Section 7-1-10, relating to
78 rules of construction, as follows:

79 "(b) Unless otherwise specifically indicated and to the full extent permitted by the
80 Constitution of Georgia, any reference in this title to an existing statute or regulation shall
81 mean to such statute or regulation as has been or may in the future be amended or have
82 material added to it. If in any case such construction is not constitutionally permissible,
83 such reference shall mean to the statute or regulation as it existed on ~~July 1, 2016~~
84 January 1, 2023."

85 **SECTION 3.**

86 Said title is further amended by revising subsection (a) of Code Section 7-1-241, relating to
87 restrictions on engaging in banking business, as follows:

88 "(a) No person or corporation may lawfully engage in this state in the business of banking
89 or receiving money for deposit or transmission or lawfully establish in this state a place of
90 business for such purpose, except a bank, a national bank, a credit union to the extent
91 provided in Article 3 of this chapter, a licensee engaged in ~~selling payment instruments~~
92 money transmission to the extent permitted by Article 4 of this chapter, ~~an international~~
93 ~~banking agency~~ a foreign bank branch or foreign bank agency to the extent provided in

94 ~~Article 5~~ Article 14 of this chapter, or a savings and loan association to the extent provided
 95 by the laws of the United States."

96 **SECTION 4.**

97 Said title is further amended by revising subsections (a) and (b) of Code Section 7-1-243,
 98 relating to restrictions on banking and trust nomenclature, as follows:

99 "(a) Except as provided in subsection (c) of this Code section, no person or corporation
 100 except a bank, a national bank, a foreign bank as defined in Code Section 7-1-1100, a bank
 101 as defined in Code Section 7-1-628.1, a corporation lawfully owning the majority of the
 102 voting stock of a bank, a national bank, or a bank as defined in Code Section 7-1-628.1, or
 103 a subsidiary of such bank, national bank, bank as defined in Code Section 7-1-628.1, or
 104 corporation shall use the words 'bank,' 'banker,' 'banking company,' 'banking house,' or any
 105 other similar name indicating that the business done is that of a bank upon any sign at its
 106 place of business or elsewhere, or upon any of its letterheads, billheads, blank checks,
 107 blank notes, receipts, certificates, circulars, advertisements, or any other written or printed
 108 matter."

109 "(b) Except as provided in subsection (c) of this Code section, no person or corporation
 110 except:

- 111 (1) A corporation lawfully authorized to exercise trust powers or any subsidiary thereof;
 112 (2) A corporation lawfully owning the majority of the voting stock of any corporation
 113 authorized to exercise trust powers, or any subsidiary of such owner corporation;
 114 (3) An enterprise whose structure is in the nature of a trust where the trustees include a
 115 corporation lawfully authorized to exercise trust powers in this state; ~~or~~
 116 (4) An eleemosynary institution; or
 117 (5) A foreign bank as defined in Code Section 7-1-1100

118 shall use the words 'trust' or 'trust company' or any similar name indicating that the business
 119 done is that of a trust company upon any sign at its place of business or elsewhere, or upon

120 any of its letterheads, billheads, blank checks, blank notes, receipts, certificates, circulars,
121 advertisements, or any other written or printed matter."

122 **SECTION 5.**

123 Said title is further amended by revising Code Section 7-1-310, relating to powers of trust
124 companies to act as fiduciary and in other representative capacities, by adding a new
125 subsection to read as follows:

126 "(d) Notwithstanding any other provisions of this chapter to the contrary, any bank, credit
127 union, or trust company which does not exercise trust powers as provided in this chapter,
128 whether or not such powers have been incorporated into its articles, may, with the consent
129 of the department, contract with any bank, credit union, or trust company exercising trust
130 powers to provide for the latter bank, credit union, or trust company to offer trust services
131 through the branches and offices of the former bank, credit union, or trust company."

132 **SECTION 6.**

133 Said title is further amended by revising subsection (c) of Code Section 7-1-511, relating to
134 proposal and adoption of amendments to articles relative to bank and trust companies, and
135 adding a new subsection to read as follows:

136 "(c) Except as provided in subsections (d), and (e), and (f) of this Code section, adoption
137 of each amendment shall require the affirmative vote of the shareholders entitled to cast at
138 least a majority of the votes which all shareholders are entitled to cast thereon and, if any
139 class is entitled to vote thereon as a class, of the holders of at least a majority of the
140 outstanding shares of such class."

141 "(f) Notwithstanding the other provisions of this Code section, the board of directors may
142 adopt a resolution amending the articles to change the name of the bank or trust company
143 without shareholder action unless the articles provide otherwise."

144 **SECTION 7.**

145 Said title is further amended by repealing and reserving Code Section 7-1-612, relating to
146 power of banks to contract with other banks for trust services.

147 **SECTION 8.**

148 Said title is further amended by revising subsection (a) of Code Section 7-1-622, relating to
149 provisions applicable to interstate acquisitions or mergers by bank holding companies,
150 eligibility of applicants, and commissioner's ruling required, as follows:

151 "(a) A bank holding company may acquire a bank in Georgia, and a bank holding company
152 having its principal place of business in this state may acquire a bank having banking
153 offices in another state, upon compliance with the provisions of Code Sections 7-1-605
154 through ~~7-1-612~~ 7-1-611 and in particular Code Section 7-1-606, which provisions shall
155 be expressly applicable to any such acquisition. Compliance with all applicable
156 regulations, payment of applicable fees, and registration of the holding company shall be
157 required. The restrictions of this Code section shall apply."

158 **SECTION 9.**

159 Said title is further amended by revising subsection (a) of Code Section 7-1-625, relating to
160 provisions applicable to, and qualification of, bank holding companies in state, reciprocal
161 agreements, and confidentiality of reports, as follows:

162 "(a) Any Georgia bank holding company controlling a bank having banking offices in
163 Georgia and any out-of-state bank holding company controlling a Georgia state bank shall
164 be subject to the provisions of Code Sections 7-1-605 through ~~7-1-612~~ 7-1-611 and the
165 rules and regulations of the department applicable to bank holding companies."

166

SECTION 10.

167 Said title is further amended by revising subsection (d) of Code Section 7-1-628.5, relating
168 to requirement for out-of-state bank that is resulting bank of interstate merger transaction,
169 as follows:

170 "(d) Any holding company of the resulting bank from an interstate merger transaction
171 between an out-of-state bank and a Georgia state bank shall comply with Part 19 of this
172 article and Code Sections 7-1-605 through ~~7-1-612~~ 7-1-611."

173

SECTION 11.

174 Said title is further amended by revising paragraphs (4), (5), (14), and (15) and adding a new
175 paragraph to Code Section 7-1-650, relating to powers of credit unions, as follows:

176 "(4) On the authority of its board of directors or by employees authorized by the board
177 of directors, invest:

178 (A) In general and direct obligations of the United States, including bonds and
179 securities upon which payment of principal and interest is fully guaranteed by the
180 United States; in general and direct obligations of any state or territorial government
181 of the United States upon which payment of principal and interest is fully guaranteed
182 by the state or territory; in general and direct obligations of counties, districts, and
183 municipalities of any state or territorial government of the United States upon which
184 payment of principal and interest is fully guaranteed by the issuing county, district, or
185 municipality; obligations issued by banks for cooperatives, federal land banks, federal
186 intermediate credit banks, federal home loan banks, the Federal Home Loan Bank
187 Board, or any corporation designated in Section 846 of Title 31 of the United States
188 Code as a wholly owned government corporation; or in obligations, participations, or
189 other instruments of or issued by or fully guaranteed as to principal and interest by the
190 Federal National Mortgage Association or the Government National Mortgage
191 Association;

192 ~~(B) In general and direct obligations of the State of Georgia, its counties, districts, and~~
 193 ~~municipalities which have been validated as provided by law, if no more than 25~~
 194 ~~percent of the shares and deposits of a credit union shall be invested in the obligations~~
 195 ~~of any one such obligor~~ Reserved;

196 (C) In loans to other credit unions, provided that the loans in the aggregate do not
 197 exceed ~~10~~ 50 percent of the ~~shares, deposits, and surplus~~ net worth of the investing
 198 lending credit union;

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

205 (E) In any other types of investments authorized by the department, ~~including~~
 206 ~~commercial paper~~, provided that such investments shall not, in the aggregate, exceed
 207 ~~10~~ 25 percent of the ~~shares, deposits, and surplus of the investing credit union or 15~~
 208 ~~percent of its equity capital, as defined by the department, in authorized investments~~
 209 ~~issued by any single obligor~~ its net worth;

210 (5) Borrow from any source, provided that the total of such funded borrowings shall at
 211 no time exceed ~~50~~ 200 percent of ~~paid-in shares, deposits, and surplus~~ its net worth. The
 212 department may, notwithstanding the other provisions of this Code section, ~~temporarily~~
 213 waive the requirements of this paragraph to permit an individual credit union to borrow
 214 for ~~emergency~~ authorized purposes;"

215 "(14) Provide third-party payment services to its members; ~~and~~

216 (15) Provide check-cashing services, sale of payment instruments, or sale of international
 217 remittances to those consumers eligible for membership; and

218 (16) Enter into an agency relationship, as defined in Code Section 7-1-4, subject to
219 restrictions and qualifications prescribed by rules and regulations of the department."

220 **SECTION 12.**

221 Said title is further amended by revising paragraph (c) of Code Section 7-1-655, relating to
222 boards of directors, credit and audit committees, officers, oaths of officials, removal from
223 office, suspension of member, filling of vacancies, and notification to department of change
224 in president or chief executive officer relative to credit unions, as follows:

225 "(c) At the organizational meeting and at its first meeting after each annual meeting of the
226 members, the board of directors shall appoint an audit committee, credit committee,
227 chairperson, secretary, and such other officers consistent with the bylaws as the board
228 deems desirable. No member of the audit committee may be an employee of the credit
229 union ~~serve as a member of the credit committee or as an officer, unless the board of~~
230 ~~directors functions as the credit committee as provided for in subsection (f) of Code~~
231 ~~Section 7-1-658."~~

232 **SECTION 13.**

233 Said title is further amended by revising Code Section 7-1-658, relating to loans, by adding
234 a new subsection to read as follows:

235 "(j) Notwithstanding the provisions of subsections (b) and (e) of this Code section
236 requiring prior approval by the board of directors or credit committee for all loans that in
237 the aggregate exceed 5 percent of its net worth, the department upon request by a credit
238 union may increase the threshold for such approval but in no event shall such threshold
239 exceed \$150,000.00."

240 **SECTION 14.**

241 Said title is further amended by revising subsection (b) of Code Section 7-1-659, relating to
242 entrance fees, reserves, and exclusion of state and federal credit union reserves from tax
243 calculations, as follows:

244 "(b) Immediately before the payment of each dividend, the gross earnings of the credit
245 union shall be determined. There shall be set aside from that amount, ~~as an allowance~~
246 allowances for ~~loan and lease~~ credit losses, sums adequate to cover such anticipated losses,
247 based on the risk characteristics of the loan portfolio."

248 **SECTION 15.**

249 Said title is further amended by revising Code Section 7-1-660, relating to dividends and
250 interest, as follows:

251 "7-1-660.

252 (a) As used in this Code section, the term 'dividend' means a designated distribution of
253 earnings other than the payable contracted rate of interest due to members and depositors
254 in all deposit and share account categories.

255 (b) At such intervals and for such periods as the board of directors may authorize,
256 dividends and interest from retained undivided earnings may be declared at such rates
257 amounts as are determined by the board, provided that such dividends and interest shall not
258 be paid until provision for the transfer to the ~~allowance~~ allowances for ~~loan~~ credit losses
259 has been made. ~~Dividends or interest in excess of 100 percent of a credit union's net~~
260 ~~earnings before dividends shall be approved in writing by the department prior to payment,~~
261 ~~provided that an application from a credit union with net worth equal to or in excess of the~~
262 ~~requirements for a well-capitalized credit union, as defined by the National Credit Union~~
263 ~~Administration rules and regulations, shall be deemed to be approved five business days~~
264 ~~after the receipt of the dividend approval form by the department unless the department~~
265 ~~notifies the credit union that the dividend is not approved within this period. The~~

266 Dividends in excess of specified amounts prescribed by regulations of the department to
267 ensure that credit unions maintain an adequate capital structure shall not be paid without
268 the prior approval of the department. In such cases, the proposed dividend or interest may
269 be paid after approval by the department upon its determination that such payment would
270 be in the continued best interest of the credit union, would promote its stability, and would
271 not impair its ability to repay its creditors other than its ~~shareholders~~ members and
272 depositors."

273 **SECTION 16.**

274 Said title is further amended by revising Code Section 7-1-661, relating to fiscal year, special
275 meetings of members, and voting and proxies, as follows:

276 "7-1-661.

277 The credit union fiscal year shall end at the close of business on December 31, unless the
278 bylaws of the credit union specify a different fiscal year. Special meetings of the members
279 may be held by order of the directors or on written request of 10 percent of the members.
280 At all meetings a member shall have but one vote. No member may vote by proxy; but a
281 society, association, partnership, or corporation having membership in the credit union may
282 be represented by one person duly authorized by said society, association, partnership, or
283 corporation to represent it. At any meeting the members may decide on any matter of
284 interest to the credit union and may overrule the board of directors, provided the notice of
285 the meeting shall have stated the question to be considered."

286 **SECTION 17.**

287 Said title is further amended by revising Code Section 7-1-669, relating to central credit
288 union, as follows:

289 "7-1-669.

290 (a) ~~As used in this Code section, the term 'central corporate~~ credit union' means a credit
291 union which is organized to serve a field of membership which consists primarily of other
292 credit unions operating pursuant to this chapter, any other state credit union law, or the
293 Federal Credit Union Act. A ~~central corporate~~ credit union may be organized and operated
294 under this chapter and subject to all provisions of this chapter which are not inconsistent
295 with this Code section. ~~Such credit union shall use the word 'central' in its name.~~

296 (b) The field of membership of a ~~central corporate~~ credit union shall include credit unions
297 organized and operating under this chapter, any other state credit union law, or under the
298 Federal Credit Union Act. In addition, the field of membership may include:

299 (1) Members of credit unions which are members of the ~~central corporate~~ credit union;

300 (2) Officials and employees of any organization or association of credit unions and of
301 the ~~central corporate~~ credit union;

302 (3) Except as limited in Article 1 of this chapter, employees of the department or of the
303 National Credit Union Administration;

304 (4) Organizations and associations of persons or credit unions included in the foregoing;

305 (5) Persons who are:

306 (A) Members of a credit union that has entered into voluntary or involuntary
307 dissolution; or

308 (B) Indebted to a credit union which has entered into voluntary or involuntary
309 dissolution; or

310 (C) Nonmember depositors of a credit union which has entered into voluntary or
311 involuntary dissolution; and

312 (6) Groups within a common bond which are determined by the commissioner to lack
313 the potential membership required for approval of their own credit union.

314 (c) The ~~central corporate~~ credit union may make loans to individuals who are members
315 pursuant to paragraph (1) of subsection (b) of this Code section only upon approval of the

316 credit committee of the member credit union of which the individual is a member and to
317 individuals who are members pursuant to paragraph (3) of subsection (b) of this Code
318 section only upon reporting such loan to the appropriate supervisory authority.

319 (d) The commissioner may, in his or her discretion, approve greater borrowings than
320 provided in this chapter when required to enable the credit union to meet its obligations to
321 its members and otherwise assist its members during any emergency or hardship.

322 (e) A ~~central~~ corporate credit union may:

323 (1) Make loans to other credit unions, but loans to any one credit union shall not exceed:

324 (A) For unsecured loans and lines of credit, excluding pass-through and guaranteed
325 loans from the Central Liquidity ~~Fund~~ Facility and the National Credit Union Share
326 Insurance Fund, more than 50 percent of ~~capital~~ its net worth; or

327 (B) For secured loans and lines of credit, excluding those secured by shares or
328 marketable securities and member reverse repurchase transactions, more than 100
329 percent of ~~capital~~ its net worth.

330 ~~For the purposes of this paragraph, the definition of capital shall be consistent with~~
331 ~~federal law and regulations.~~ The department may utilize ~~other~~ definitions found in the
332 National Credit Union Administration rules and regulations in interpreting this
333 subsection;

334 (2) Make loans to other members as specified in Code Section 7-1-658;

335 (3) Purchase shares of and make deposits in other credit unions;

336 (4) Obtain or acquire the assets and liabilities of any credit union which enters into
337 liquidation;

338 (5) Invest in and grant loans to associations of credit unions and to organizations
339 chartered to provide service to credit unions; and

340 (6) Borrow money and accept deposits from any source.

341 (f) The commissioner may issue such special regulations as he or she may deem prudent
342 or necessary to allow a ~~central~~ corporate credit union to promote effectively the liquidity

343 and sound financial management of its member credit unions without unduly endangering
 344 its own liquidity and sound financial condition. Such special regulations need not be
 345 applicable to all credit unions but may be applicable only to the ~~central~~ corporate credit
 346 union. The ~~central~~ corporate credit union shall maintain an adequate ~~allowance~~ allowances
 347 for ~~loan and lease~~ credit losses in accordance with generally accepted accounting principles
 348 and such other reserves as may be required by the rules and regulations of the department.
 349 (g) A ~~central~~ corporate credit union shall have all the rights and powers of any other credit
 350 union organized under this chapter and the additional rights and powers specified in this
 351 Code section."

352 SECTION 18.

353 Said title is further amended by revising Code Section 7-1-680, relating to definitions relative
 354 to the sale of payment instruments, as follows:

355 "7-1-680.

356 As used in this article, the term:

357 (1) 'Acting in concert' means knowingly acting together with a common goal of jointly
 358 acquiring control of a licensee whether or not pursuant to an express agreement.

359 ~~(1)(2)~~ (2) 'Authorized agent' means a person designated by a licensee pursuant to Code
 360 Section 7-1-683.1 to engage in money transmission, the sale of payment instruments, or
 361 the issuance of payment instruments.

362 (3) 'Average daily money transmission liability' means the amount of the licensee's
 363 outstanding money transmission obligations in this state at the end of each day in a given
 364 calendar quarter ending March 31, June 30, September 30, or December 31, added
 365 together and divided by the total number of days in the quarter.

366 ~~(2) 'Check' means any check, money order, draft, or negotiable demand instrument.~~

367 ~~(3)~~ (4) 'Closed-loop transaction' means a transaction where the value or credit is primarily
 368 intended to be redeemed for a limited universe of goods, intangibles, services, or other

369 items provided by the issuer of the payment instrument, its affiliates or agents, or others
370 involved in the transaction functionally related to the issuer or its affiliates or agents.

371 ~~(4)~~(5) 'Commissioner' means the commissioner of banking and finance.

372 ~~(5)~~(6) 'Control,' ~~'controlling,' 'controlled by,' or 'under common control with'~~ means the
373 direct or indirect possession of power to direct or cause the direction of the management
374 and policies of a person or the direct or indirect possession of power to elect or appoint
375 a majority of executive officers or other persons exercising managerial authority of a
376 person.

377 ~~(6)~~(7) 'Covered employee' means any employee of a licensee or an authorized agent
378 engaged in any function related to ~~the selling of payment instruments or~~ money
379 transmission.

380 ~~(7)~~(8) 'Department' means the Department of Banking and Finance.

381 ~~(8)~~(9) 'Executive officer' means the chief executive officer, president, chief financial
382 officer, chief operating officer, each officer with responsibility involving policy-making
383 functions for a significant aspect of a person's business, or any other individual
384 performing similar managerial or supervisory functions with respect to any organization,
385 whether incorporated or unincorporated.

386 ~~(9)~~(10) 'Individual' means a natural person.

387 ~~(10)~~(11) 'Licensee' means a person, ~~including, but not limited to, a money transmitter and~~
388 ~~a payment instrument seller,~~ duly licensed by the department pursuant to this article.

389 ~~(11)~~(12) 'Misrepresent' means to make a false statement of a substantive fact. ~~The~~ Such
390 term may also mean to engage in any conduct which leads to a false belief which is
391 material to the transaction.

392 ~~(12)~~(13) 'Monetary value' means a medium of exchange, whether or not redeemable in
393 money.

394 ~~(13)~~(14) 'Money transmission,' 'transmit money,' or 'transmission of money' means
395 engaging in the business of:

396 (A) Receiving ~~receiving~~ money or monetary value for transmission or transmitting
 397 money or monetary value within the United States or to locations abroad by any and all
 398 means, including, but not limited to, ~~an~~ to:

399 (i) An order; ~~order,~~

400 (ii) A wire; ~~wire,~~

401 (iii) A facsimile; ~~facsimite, or and~~

402 (iv) An electronic ~~electronic~~ transfer;

403 (B) Selling or issuing payment instruments, including the creation, issuance, or sale of
 404 a payment instrument that is redeemable in cash or monetary value; and

405 (C) Payroll processing services.

406 ~~The term does~~ Such term shall not include closed-loop transactions.

407 ~~(14)~~(15) 'Money transmitter' means a person licensed under this article to transmit
 408 money.

409 ~~(14.1)~~(16) 'Multistate licensing process' means any licensing agreement entered into by
 410 and among state agencies that regulate money transmitters ~~and sellers of payment~~
 411 ~~instruments.~~

412 ~~(15)~~(17) 'Nationwide Multistate Licensing System and Registry' means a licensing
 413 system developed and maintained by the Conference of State Bank Supervisors and the
 414 American Association of Residential Mortgage Regulators for the licensing and
 415 registration of certain persons engaged in nondepository activities.

416 ~~(16)~~(18) 'Open-loop transaction' means a transaction using a payment instrument ~~with~~
 417 ~~stored value~~ to redeem for goods or services at any location that accepts such payment
 418 instrument.

419 ~~(16.1)~~(19) 'Passive investor' means a person that:

420 (A) Owns, directly or indirectly, at least 10 percent but less than 25 percent interest in
 421 or voting shares of a licensee or person in control of a licensee;

422 (B) Does not have the power to elect a majority of the members of the board of
423 directors of a licensee;

424 (C) Is not employed by and does not perform any managerial duties for the licensee or
425 person in control of a licensee; and

426 (D) Does not have the power to exercise, directly or indirectly, a controlling influence
427 over the management or policies of a licensee or person in control of a licensee.

428 ~~(17)~~(20) 'Payment instrument' means any instrument, order, or device for the payment
429 or transmission of money or monetary value, whether or not it is a negotiable instrument
430 under the terms of Article 3 of Title 11, relating to negotiable instruments. ~~The~~ Such
431 term includes, but is not limited to, checks, money orders, drafts, stored value cards, and
432 open-loop transactions. ~~The term does~~ Such term shall not include closed-loop
433 transactions, credit card vouchers, letters of credit, or any instrument that is redeemable
434 by the issuer only in specific goods or services of the issuer.

435 ~~(18)~~(21) 'Payment instrument holder' means a person that has purchased a payment
436 instrument from a ~~payment instrument seller~~ money transmitter or who has had monetary
437 value transmitted by a money transmitter.

438 ~~(19) 'Payment instrument issuer' or 'payment instrument seller' means a person licensed~~
439 ~~under this article to engage in the issuance or sales of payment instruments.~~

440 (22) 'Payroll processing services' means receiving money for transmission pursuant to
441 a contract with a person to deliver wages or salaries, make payment of payroll taxes to
442 state and federal agencies, make payments relating to employee benefit plans, or make
443 distributions of other authorized deductions from wages or salaries. Such term shall not
444 include an employer performing payroll processing services on its own behalf or on
445 behalf of its affiliate.

446 ~~(20)~~(23) 'Person' means any individual, sole proprietorship, corporation, limited liability
447 company, partnership, trust, or any other group of individuals, however organized.

448 ~~(21)~~(24) 'Sale' and 'selling' mean the passing of title from the ~~payment instrument seller~~
449 money transmitter or the ~~payment instrument seller's~~ money transmitter's agent to a
450 payment instrument holder or remitter or an agreement to transfer money or monetary
451 value.

452 ~~(22) 'Sale of payment instruments,' 'selling of payment instruments,' or 'issuance of~~
453 ~~payment instruments' means the creation, issuance, or sale of a payment instrument that~~
454 ~~is redeemable in cash or monetary value.~~

455 ~~(23)~~(25) 'Signed' shall have the same meaning as provided in Code Section 11-1-201.

456 (26) 'Stored value' means monetary value that represents a claim against the issuer
457 evidenced by an electronic or digital record and is intended and accepted for use as a
458 means of redemption for money or monetary value or payment for goods or services.
459 Such term includes, but is not limited to, prepaid access as defined by 31 C.F.R. Section
460 1010.100. Such term shall not include closed-loop stored value that is not sold to the
461 public but is issued and distributed as part of a loyalty, rewards, or promotional program.

462 (27) 'Tangible net worth' means the aggregate assets of a person, excluding all intangible
463 assets, less liabilities, as determined in accordance with generally accepted accounting
464 principles in the United States.

465 ~~(24)~~(28) 'Ultimate equitable owner' means a person that:

466 (A) Owns, directly or indirectly, a 10 percent or more interest in a corporation or any
467 other form of business organization;

468 (B) Owns, directly or indirectly, 10 percent or more of the voting shares of any
469 corporation or any other form of business organization; or

470 (C) Exerts control, directly or indirectly, over a corporation or any other form of
471 business organization, regardless of whether such person owns or controls such interest
472 through one or more natural persons or one or more proxies, powers of attorney,
473 nominees, corporations, associations, limited liability companies, partnerships, trusts,
474 joint stock companies, other entities or devices, or any combination thereof.

475 For purposes of determining ultimate equitable ownership by an individual, the
 476 individual's interest shall be aggregated with the interest of any other immediate family
 477 member, including the individual's spouse, parents, children, siblings, mothers- and
 478 fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other
 479 individual who shares such individual's home.

480 ~~(25)~~(29) 'Unique identifier' means a number or other identifier assigned by protocols
 481 established by the Nationwide Multistate Licensing System and Registry.

482 ~~(26)~~(30) 'Virtual currency' means a digital representation of monetary value that does not
 483 have legal tender status as recognized by the United States government. ~~The term does~~
 484 Such term shall not include the software or protocols governing the transfer of the digital
 485 representation of monetary value; ~~The term also does not include~~ units of value that are
 486 issued in an affinity or rewards program and that cannot be redeemed for money or
 487 virtual currencies; ~~or. Neither does the term include~~ an affinity or rewards program tied
 488 to a credit, debit, or prepaid card that awards points for purchases or other transactions,
 489 which points can be redeemed for dollar denominated credit to a checking, credit card,
 490 or prepaid account, or for a gift card, goods, travel, or services."

491

SECTION 19.

492 Said title is further amended by revising Code Section 7-1-681, relating to licensing
 493 requirements, engagement in sale of payment instruments or money transmission defined,
 494 and liabilities, as follows:

495 "7-1-681.

496 (a) Pursuant to this article, the department may license a person to engage in ~~the sale of~~
 497 ~~payment instruments or the~~ money transmission of money.

498 (b) ~~A license for the sale of payment instruments authorizes the licensee to sell payment~~
 499 ~~instruments and to transmit money.~~

500 (c) ~~A license for the transmission of money authorizes the licensee to transmit money.~~

501 ~~(d)~~ No person, regardless of the location of such person, its facilities, or its agents, shall
 502 engage in ~~the sale of payment instruments or~~ money transmission in this state without
 503 having first obtained a license authorizing such activity under this article. This prohibition
 504 applies whether or not a person utilizes a branch, subsidiary, affiliate, or agent in this state.
 505 A person is deemed to be engaged in ~~the sale of payment instruments or~~ money
 506 transmission if the person advertises ~~any of those services~~ that service, provides ~~any of~~
 507 ~~those services~~ that service with or without compensation, solicits to provide ~~any of those~~
 508 ~~services~~ that service, or holds itself out as providing ~~any of those services~~ that service to
 509 or from this state, even if the person has no physical presence in this state.

510 ~~(e)~~(c) Every person that directly or indirectly controls another that violates subsection ~~(d)~~
 511 (b) of this Code section, including, but not limited to, each general partner, executive
 512 officer, joint venture, ultimate equitable owner, or director of such person, and every
 513 person occupying a similar status or performing similar functions as such person violates
 514 with and to the same extent as such person. Any person that directly or indirectly controls
 515 a person that violates subsection ~~(d)~~ (b) of this Code section may avoid liability if such
 516 person sustains the burden of proof that the person did not know and, in the exercise of
 517 reasonable care, could not have known of the existence of the facts by reason of which the
 518 original violation is alleged to exist."

519 **SECTION 20.**

520 Said title is further amended by revising Code Section 7-1-682, relating to exemption from
 521 licensing requirements, as follows:

522 "7-1-682.

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

524 (1) Any state or federally chartered bank, trust company, credit union, savings and loan
 525 association, ~~or savings bank, or industrial bank,~~ provided that every when such bank, trust

- 526 company, credit union, savings and loan association, ~~or savings bank, or industrial bank~~
527 has deposits that are federally insured;
- 528 (2) Any authorized agent of a licensee;
- 529 (3) The United States Postal Service or its agent;
- 530 (4) ~~A state or federal governmental department, agency, authority, or instrumentality and~~
531 ~~its authorized agents~~ Any agency, division, or instrumentality of the federal government
532 of the United States; the government of the State of Georgia or the government of any
533 other state; or any county or municipal government in this state;
- 534 (5) Any foreign bank that establishes a federal branch pursuant to the International ~~Bank~~
535 Banking Act, 12 U.S.C. Section 3102;
- 536 (6) A wholly owned subsidiary of a state or federally chartered bank, trust company,
537 credit union, savings and loan association, ~~or savings bank, or industrial bank, provided~~
538 that every when such bank, trust company, credit union, savings and loan association, ~~or~~
539 savings bank, or industrial bank has deposits that are federally insured;
- 540 (7) A registered futures commission merchant under the federal commodities laws to the
541 extent of its operation as such a futures commission merchant;
- 542 (8) A person that provides clearance or settlement services pursuant to a registration as
543 a clearing agency or an exemption from such registration granted under the federal
544 securities laws to the extent of its operation as such a provider;
- 545 (9) An operator of a payment system to the extent that it provides processing, clearing,
546 or settlement services, between or among licensees or persons exempted by this Code
547 section, in connection with wire transfers, credit card transactions, debit card transactions,
548 stored value transactions, automated clearing-house transfers, or similar fund transfers;
- 549 (10) A person registered as a securities broker-dealer under federal or state securities
550 laws to the extent of its operation as such a broker-dealer; ~~or~~
- 551 (11) An individual employed by a licensee, an authorized agent, or any person exempted
552 from the licensing requirements of this article when acting within the scope of

553 employment and under the supervision of the licensee, authorized agent, or exempted
554 person as an employee and not as an independent contractor;

555 (12) A person appointed as an agent of a payee to collect and process a payment from
556 a payor to the payee for goods or services, other than money transmission itself, provided
557 to the payor by the payee, provided that:

558 (A) There exists a written agreement between the payee and the agent directing the
559 agent to collect and process payments from payors on the payee's behalf;

560 (B) The payee holds the agent out to the public as accepting payments for goods or
561 services on the payee's behalf; and

562 (C) Payment for the goods and services is treated as received by the payee upon receipt
563 by the agent so that the payor's obligation is extinguished and there is no risk of loss to
564 the payor if the agent fails to remit the funds to the payee;

565 (13) A person that acts as an intermediary by processing payments between an entity that
566 has directly incurred an outstanding money transmission obligation to a customer and the
567 customer's designated recipient, provided that the entity:

568 (A) Is properly licensed or exempt from licensing requirements under this article;

569 (B) Provides a receipt, electronic record, or other written confirmation to the customer
570 identifying the entity as the provider of money transmission in the transaction; and

571 (C) Bears sole responsibility to satisfy the outstanding money transmission obligation
572 to the customer, including the obligation to make the customer whole in connection
573 with any failure to transmit the funds to the customer's designated recipient;

574 (14) A bank holding company, office of an international banking corporation, or
575 corporation organized pursuant to the Bank Service Corporation Act, 12 U.S.C. Section
576 1861, under the laws of a state or the United States;

577 (15) Electronic funds transfer of governmental benefits for a federal, state, county, or
578 governmental agency by a contractor on behalf of the United States or a department,

579 agency, or instrumentality thereof, or on behalf of a state or governmental subdivision,
 580 agency, or instrumentality thereof;

581 (16) A board of trade designated as a contract market under the federal Commodity
 582 Exchange Act, 7 U.S.C. Section 1, or a person that, in the ordinary course of business,
 583 provides clearance and settlement services for a board of trade to the extent of its
 584 operation as or for such a board; or

585 (17) A person expressly appointed as a third-party service provider to or agent of an
 586 entity exempt under paragraphs (1) and (14) of this Code section, solely to the extent that:

587 (A) Such service provider or agent is engaging in money transmission on behalf of and
 588 pursuant to a written agreement with the exempt entity that sets forth the specific
 589 functions that the service provider or agent is to perform; and

590 (B) The exempt entity assumes all risk of loss and all legal responsibility for satisfying
 591 the outstanding money transmission obligations owed to purchasers and holders of the
 592 outstanding money transmission obligations upon receipt of the payment instrument
 593 holder's money or monetary value by the service provider or agent."

594 **SECTION 21.**

595 Said title is further amended by revising Code Section 7-1-683, relating to requirements for
 596 licensure, fees, and rules and regulations, as follows:

597 "7-1-683.

598 (a) Each applicant for a license under this article shall:

599 (1) Submit an application in writing, which is made under oath and in such form as the
 600 department may prescribe;

601 (2) Furnish to the Nationwide Multistate Licensing System and Registry the following
 602 information:

603 (A) The legal name and principal office address of the person applying for the license;

- 604 (B) The name, residence, and business address of each director, ultimate equitable
605 owner, and executive officer;
- 606 (C) If the applicant has one or more branches or other locations, including, but not
607 limited to, locations operated by an authorized agent, at or through which the applicant
608 proposes to engage in the sale of payment instruments or money transmission within
609 this state, the complete address of each such location; and
- 610 (D) The location where its initial registered office will be located in this state, if any;
611 and
- 612 (3) Submit such other data, financial statements, and pertinent information as the
613 department may require with respect to the applicant, its directors, trustees, officers,
614 members, ultimate equitable owners, subsidiaries, affiliates, or agents.
- 615 (b) The application for license shall be filed together with:
- 616 (1) An investigation and supervision fee established by the department through rule or
617 regulation which shall not be refundable but which, if the license is granted, shall satisfy
618 the fee requirement for the first licensed year or the remaining part thereof;
- 619 (2) Items required by other provisions of this article, including, but not limited to, Code
620 Sections 7-1-683.2 and 7-1-684; and
- 621 (3) Other information as may be required by the department.
- 622 (c) ~~Where a person engages only in the sale of payment instruments issued by another~~
623 ~~person which is primarily obligated for payment of the payment instrument and the seller~~
624 ~~is a wholly owned subsidiary of or is wholly owned by the sole shareholder of the issuer,~~
625 ~~the department may grant a single license naming both the seller and issuer as joint~~
626 ~~licensees. In such cases, only a single license fee shall be collected and only one corporate~~
627 ~~surety bond, pursuant to Code Section 7-1-683.2, shall be required where such bond names~~
628 ~~both the seller and issuer.~~
- 629 (d) The department shall pay all fees received from licensees and applicants related to
630 applications, licenses, and renewals to the Office of the State Treasurer; provided, however,

631 that the department may net such fees to recover the cost of participation in the Nationwide
632 Multistate Licensing System and Registry.
633 ~~(e)~~(d) The department shall enact rules and regulations regarding the time frame by which
634 all persons must submit an original or renewal application for licensure through the
635 Nationwide Multistate Licensing System and Registry."

636 **SECTION 22.**

637 Said title is further amended by revising Code Section 7-1-683.1, relating to locations for
638 conduct of business, contracting with authorized agent, and requirements of agent, as
639 follows:

640 "7-1-683.1.

641 (a) As authorized by this Code section, a licensee may conduct its business through
642 designated authorized agents at one or more locations in this state, so long as such locations
643 have been included in the licensee's application and reports as required by Code Section
644 7-1-683 and subsection (d) of Code Section 7-1-686. The department may refuse within
645 30 days after application, for cause, to approve a licensee's designation of an authorized
646 agent. In such cases the authorized agent shall have the same procedural rights as are
647 provided in this article for the denial of an application for a license. No additional license
648 other than that obtained by the licensee shall be required of any authorized agent of a
649 licensee. An authorized agent of a licensee shall ~~sell payment instruments or~~ transmit
650 money only at the location designated in the written notice provided to the department.

651 (b) Licensees desiring to conduct licensed activities through authorized agents shall enter
652 into a written contract with the authorized agent. The contract shall authorize the agent to
653 operate only pursuant to the terms of the contract and shall specifically designate the
654 authorized activities that the agent may engage in on behalf of the licensee. Upon request
655 of the department, a licensee shall provide the department with a copy of the executed
656 written contract between the licensee and its authorized agent.

657 (c) Upon the department receiving written notice from the licensee designating an
658 authorized agent, the authorized agent shall be:

659 (1) Required to operate in full compliance with this article, the rules and regulations
660 promulgated under this article, and any applicable order issued by the commissioner;

661 (2) Required to timely remit all money legally due to the licensee in accordance with the
662 terms of the written contract between the licensee and the authorized agent;

663 (3) Prohibited from utilizing subagents to carry out its responsibilities;

664 (4) Subject to examination and investigation by the department as set forth in this article,
665 including, but not limited to, the requirements of Code Section 7-1-689;

666 (5) Subject to administrative actions, including, but not limited to, the revocation or
667 suspension of its authorization to act as an authorized agent, a cease and desist order, and
668 the imposition of fines; and

669 (6) Required to comply with applicable state and federal law.

670 (d) If a license is suspended, revoked, surrendered, or expired, the licensee shall, within
671 five business days, provide documentation to the department demonstrating that the
672 licensee has notified all applicable authorized agents whose names are on record with the
673 department of the suspension, revocation, surrender, or expiration of the license. Upon
674 suspension, revocation, surrender, or expiration of a license, applicable authorized agents
675 shall immediately cease to provide money transmission in this state as an authorized agent
676 of the licensee."

677 **SECTION 23.**

678 Said title is further amended by revising Code Section 7-1-683.2, relating to bonding, as
679 follows:

680 "7-1-683.2.

681 (a)(1) Each applicant and licensee shall maintain, as a continuing requirement of
682 licensure, a minimum tangible net worth, which shall be the greater of \$100,000.00 or the
683 amount calculated pursuant to the following formula:

684 (A) Three percent of total assets for the first \$100 million;

685 (B) Two percent of additional assets over \$100 million up to \$1 billion; and

686 (C) Half a percent of additional assets over \$1 billion.

687 (2) The department may, pursuant to rules and regulations, establish a process for an
688 applicant or licensee to obtain a waiver in whole or in part of the minimum tangible net
689 worth requirement for good cause shown.

690 (b)(1) An applicant shall provide with its application a corporate surety bond issued by
691 a bonding company or insurance company authorized to do business in this state and
692 approved by the department. ~~The bond for payment instrument sellers shall be in the~~
693 ~~principal sum of \$250,000.00.~~ The bond for money transmitters shall be in the principal
694 sum of ~~\$100,000.00~~ \$250,000.00.

695 (b)(2) ~~Notwithstanding subsection (a) of this Code section paragraph (1) of this~~
696 ~~subsection,~~ the department may require an applicant or a licensee to provide additional
697 coverage for the adequate protection of payment instrument holders if the average daily
698 ~~outstanding balances for payment instrument sellers exceed~~ money transmission liability
699 of a licensee exceeds the current bond amount, ~~the average daily outstanding orders to~~
700 ~~transmit not yet paid for money transmitters exceed the current bond amount,~~ or the
701 department determines that additional coverage is necessary in order to satisfy the
702 department that the provisions of subsection (a) (b) of Code Section 7-1-684 are fulfilled.
703 A licensee's level of ~~outstandings~~ average daily money transmission liability shall be
704 determined by the portion of the licensee's financial reports dealing with transactions
705 originating in Georgia which shall be submitted to the department as set forth in its rules

706 and regulations. However, under no circumstances shall the additional bond coverage
707 required by the department exceed ~~\$2,000,000.00~~ \$2 million.

708 ~~(c)~~(3) The bond shall be in a form satisfactory to the department and shall run to the
709 State of Georgia for the benefit of the department or any payment instrument holders
710 against the licensee or its agents. The condition of the bond shall require the licensee to
711 pay any and all moneys for the benefit of any person damaged by noncompliance of a
712 licensee or its agent with this article, with the rules and regulations enacted pursuant to
713 this article, or with any condition of the bond or to pay any and all moneys that may
714 become due and owing any creditor of or claimant against the licensee arising out of the
715 licensee's ~~sale of payment instruments or~~ money transmission in this state, whether
716 through its own acts or the acts of an agent. Damage payments due under the bond
717 include moneys owed to the department for fees, fines, or penalties. In no event shall the
718 aggregate liability of the surety exceed the principal sum of the face amount of the bond.
719 Claimants against the licensee may bring an action directly on the surety bond.

720 (c)(1) Each applicant and licensee shall maintain at all times permissible investments that
721 have a market value computed in accordance with generally accepted accounting
722 principles applicable in the United States of not less than the aggregate amount of all of
723 its outstanding money transmission obligations.

724 (2) The types of investments that are permissible shall be established by the rules and
725 regulations of the department. The department may limit the extent to which a specific
726 investment maintained by a licensee within a class of permissible investments may be
727 considered a permissible investment.

728 (3) Permissible investments, even if commingled with other assets of the licensee, shall
729 be held in trust for the benefit of the purchasers and holders of the licensee's outstanding
730 money transmission obligations in the event of insolvency, the filing of a petition by or
731 against the licensee under the United States Bankruptcy Code, the filing of a petition by
732 or against the licensee for receivership, the commencement of any other judicial or

733 administrative proceeding for its dissolution or reorganization, or in the event of an action
 734 by a creditor against the licensee who is not a beneficiary of this statutory trust. No
 735 permissible investment impressed with a trust pursuant to this paragraph shall be subject
 736 to attachment, levy of execution, or sequestration by order of any court, except for a
 737 beneficiary of this statutory trust.

738 (4) Permissible investments held in trust pursuant to paragraph (3) of this subsection for
 739 the benefit of the purchasers and holders of the licensee's outstanding money transmission
 740 obligations are deemed held in trust for the benefit of such persons on a pro rata and
 741 equitable basis in accordance with statutes pursuant to which permissible investments are
 742 required to be held in this state, and other states, as applicable. Any statutory trust
 743 established pursuant to this Code section shall be terminated upon extinguishment of all
 744 of the licensee's outstanding money transmission obligations."

745 **SECTION 24.**

746 Said title is further amended by revising Code Section 7-1-684, relating to investigation of
 747 applicants for licensure and background checks on employees and others, as follows:

748 "7-1-684.

749 (a) As used in this Code section, the term 'conviction data' means a record of a finding,
 750 verdict, or plea of guilty or plea of nolo contendere with regard to any crime, regardless of
 751 whether an appeal of the conviction has been sought.

752 (a)(b) The department shall conduct an investigation of every applicant for licensure to
 753 determine the financial responsibility, experience, character, and general fitness of such
 754 applicant. The department may issue the applicant a license to transmit money ~~or sell~~
 755 ~~payment instruments~~ if the department determines to its general satisfaction that:

756 (1) The applicant is financially sound and responsible and able to transmit money ~~or sell~~
 757 ~~payment instruments~~ in an honest, fair, and efficient manner and with the confidence and
 758 trust of the community; and

759 (2) All conditions for licensure set forth in this article or the rules and regulations of the
760 department have been satisfied.

761 ~~(b)~~(c) The department shall not issue a license or may revoke a license if it finds that the
762 applicant, licensee, or authorized agent; any person who is a director, officer, partner,
763 covered employee, or ultimate equitable owner of the applicant, licensee, or authorized
764 agent; or any individual who directs the affairs of or controls or establishes policy for the
765 applicant, licensee, or authorized agent has been convicted of a felony in any jurisdiction
766 or of a crime which, if committed within this state, would constitute a felony under the
767 laws of this state. For the purposes of this article, a person shall be deemed to have been
768 convicted of a crime if such person shall have pleaded guilty or nolo contendere to a charge
769 thereof before a court or federal magistrate or shall have been found guilty thereof by the
770 decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective
771 of the pronouncement of sentence or the suspension thereof and regardless of whether first
772 offender treatment without adjudication of guilt pursuant to the charge was entered or an
773 adjudication or sentence was otherwise withheld or not entered on that charge, unless and
774 until such plea of guilty or such decision, judgment, or verdict shall have been set aside,
775 reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or
776 both probation and sentence of a first offender have been successfully completed and
777 documented or unless the person convicted of the crime shall have received a pardon
778 therefor from the President of the United States or the governor or other pardoning
779 authority in the jurisdiction where the conviction occurred ~~or shall have received an official~~
780 ~~certification of pardon granted by the state's pardoning body where the conviction occurred~~
781 ~~which removes the legal disabilities resulting from such conviction and restores civil and~~
782 ~~political rights.~~

783 ~~(e)~~(d) The department shall be authorized to obtain conviction data with respect to any
784 applicant, licensee, or authorized agent; any person who is a director, officer, partner,
785 covered employee, or ultimate equitable owner of the applicant, licensee, or authorized

786 agent; or any individual who directs the affairs of or controls or establishes policy for the
787 applicant, licensee, or authorized agent. ~~The department may submit directly to the~~
788 ~~Georgia Crime Information Center two complete sets of fingerprints of such person,~~
789 ~~together with the required records search fees and such other information as may be~~
790 ~~required. Fees for background checks that the department administers shall be sent to the~~
791 ~~department by applicants, licensees, and authorized agents together with the fingerprints.~~
792 Criminal history record checks may be requested by the department through the Georgia
793 Crime Information Center and the Federal Bureau of Investigation. The department shall
794 have the authority to receive the results of such checks. In connection with an application
795 under this article, the department may use the Nationwide Multistate Licensing System and
796 Registry as a channeling agent for the submission of fingerprints to the Federal Bureau of
797 Investigation and any governmental agency or entity authorized to receive such information
798 for a state, national, and international criminal history background check and the receipt
799 of such checks by the department. Fees required for a criminal history record check by the
800 Georgia Crime Information Center or the Federal Bureau of Investigation shall be paid by
801 the applicant or licensee.

802 (d)(e) Upon request by the department, each applicant, licensee, or authorized agent; any
803 person who is a director, officer, partner, covered employee, or ultimate equitable owner
804 of the applicant, licensee, or authorized agent; or any individual who directs the affairs of
805 or controls or establishes policy for the applicant, licensee, or authorized agent shall submit
806 to the department ~~two complete sets of fingerprints, the required records search fees, and~~
807 ~~such other information as may be required. Fees for background checks that the~~
808 ~~department administers shall be submitted to the department by applicants, licensees, and~~
809 ~~authorized agents together with two complete sets of fingerprints, and the department is~~
810 ~~authorized to net such fees to recover any costs incurred by the department related to~~
811 ~~running the background checks. Upon receipt of fingerprints, fees, and other required~~
812 ~~information~~ from the department, the Georgia Crime Information Center shall promptly

813 transmit ~~one set of~~ fingerprints to the Federal Bureau of Investigation for a search of bureau
814 records and an appropriate report and ~~shall retain the other set and~~ promptly conduct a
815 search of its own records and records to which it has access. The Georgia Crime
816 Information Center shall notify the department in writing of any derogatory finding,
817 including, but not limited to, any conviction data regarding the fingerprint records check,
818 or if there is no such finding. All conviction data received by the department ~~or by the~~
819 ~~applicant, licensee, or authorized agent~~ shall be used by the ~~party requesting such data~~
820 department for the exclusive purpose of carrying out the responsibilities of this article, shall
821 not be a public record, shall be confidential, and shall not be disclosed to any other person
822 or agency except to any person or agency which otherwise has a legal right to inspect such
823 data. All such records shall be maintained by the department ~~and the applicant, licensee,~~
824 ~~or authorized agent~~ pursuant to laws regarding such records and the rules and regulations
825 of the Federal Bureau of Investigation and the Georgia Crime Information Center, as
826 applicable. ~~As used in this Code section, the term 'conviction data' means a record of a~~
827 ~~finding, verdict, or plea of guilty or plea of nolo contendere with regard to any crime,~~
828 ~~regardless of whether an appeal of the conviction has been sought.~~

829 ~~(e)~~(f) Every applicant and licensee shall be authorized and required to obtain and maintain
830 the results of criminal background checks on covered employees. Such criminal
831 background checks shall be ~~handled by the Georgia Crime Information Center pursuant to~~
832 ~~Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information~~
833 ~~Center~~ commercial background checks. Applicants and licensees shall be responsible for
834 any applicable fees charged by the ~~Georgia Crime Information Center~~ company performing
835 the criminal background check. An applicant or licensee may only employ a person whose
836 background data has been checked and has been found to be in compliance with all lawful
837 requirements prior to the initial date of hire. This provision does not apply to directors,
838 officers, partners, or ultimate equitable owners of applicants or licensees or to persons who
839 direct the affairs of or control or establish policy for applicants or licensees, whose

840 background shall have been investigated through the department before taking office,
841 beginning employment, or securing ownership. ~~Upon receipt of information from the~~
842 ~~Georgia Crime Information Center that is incomplete or that indicates a covered employee~~
843 ~~has a criminal record in any state other than Georgia, the employer shall submit to the~~
844 ~~department two complete sets of fingerprint cards for such person, together with the~~
845 ~~applicable fees and any other required information. The department shall submit such~~
846 ~~fingerprints as provided in subsection (d) of this Code section. The department shall be~~
847 ~~entitled to review the files of any applicant or licensee to determine whether the required~~
848 ~~commercial background checks have been conducted and whether all covered employees~~
849 ~~are qualified. Notwithstanding the requirement that applicants and licensees conduct such~~
850 ~~commercial background checks, the department shall retain the right to obtain conviction~~
851 ~~data on covered employees of applicants, licensees, and authorized agents pursuant to~~
852 ~~subsection (d) of this Code section.~~

853 (f)(g) Upon request by the department, an applicant, licensee, or authorized agent shall
854 take all steps necessary to have an international criminal history background check
855 performed on any directors, officers, partners, covered employees, or ultimate equitable
856 owners of applicants, licensees, or authorized agents or persons who direct the affairs of
857 or control or establish policy for applicants, licensees, or authorized agents. The results of
858 such international criminal history background check shall be provided to the department.

859 (g) ~~Applicants and licensees shall have the primary responsibility for obtaining~~
860 ~~background checks on covered employees. The department shall be entitled to review the~~
861 ~~files of any applicant or licensee to determine whether the required background checks~~
862 ~~have been run and whether all covered employees are qualified. The department shall be~~
863 ~~authorized to discuss the status of employee background checks with applicants, licensees,~~
864 ~~and authorized agents. Notwithstanding any other provisions in this article, the department~~
865 ~~shall retain the right to obtain conviction data on covered employees of applicants,~~
866 ~~licensees, and authorized agents."~~

867

SECTION 25.

868 Said title is further amended by revising Code Section 7-1-686, relating to display of license,
869 license nontransferable and nonassignable, and notification of additional locations, as
870 follows:

871 "7-1-686.

872 (a) A license issued pursuant to this article shall be kept ~~conspicuously posted~~ in the place
873 of business of the licensee, and a copy of such license shall be displayed prominently in
874 every physical location in this state where money transmission is conducted. If the licensee
875 has no physical location in this state, then ~~a copy of such license~~ and the licensee's unique
876 identifier shall be clearly posted and accessible through whichever medium the licensee
877 engages in ~~the sale of payment instruments or~~ money transmission in this state.

878 (b) Such license shall not be transferable or assignable.

879 (c) No licensee shall engage in ~~the sale of payment instruments or~~ money transmissions
880 under any name or names other than those authorized by the department in writing.

881 (d) A licensee shall give written notice to the department of ~~its intent to operate~~ any new
882 or additional locations, including, but not limited to, locations operated by an authorized
883 agent, not reported in either its original or renewal application. The required notice shall
884 be in such form and contain such information as required by the department."

885

SECTION 26.

886 Said title is further amended by revising subsection (e) of Code Section 7-1-687, relating to
887 notice of action against licensee by creditor or claimant and other notification requirements,
888 as follows:

889 "(e) Unless prior approval of a change in executive officer is required under Code Section
890 7-1-688 and notwithstanding subsection ~~(e)~~ (f) of Code Section 7-1-684 requiring a
891 criminal background check prior to the initial date of hire, a licensee shall notify the
892 department in writing of any change of executive officer in such a manner that the notice

893 is received by the department no later than ten business days after the effective date of the
894 change. In the event of such change, the licensee shall initiate a criminal background check
895 no later than ten business days after the effective date of the change. If the department
896 determines that an executive officer does not meet the requirements of ~~subsections (a) or~~
897 ~~(b)~~ subsection (b) or (c) of Code Section 7-1-684, the department may disapprove the
898 notice of change, and the licensee shall remove the individual from the executive officer
899 position upon receipt of the disapproval."

900

SECTION 27.

901 Said title is further amended by revising Code Section 7-1-688, relating to approval required
902 of new ultimate equitable owner, other change of control, or executive officer of licensee,
903 denial of application, and application of statute, as follows:

904 "7-1-688.

905 (a) Except as provided in this Code section, no person or group of persons acting in
906 concert shall become an ultimate equitable owner of any licensee through acquisition or
907 other change in control or become an executive officer of a licensee as a result of such
908 acquisition or other change in control unless the person or group of persons acting in
909 concert has first received written approval for such acquisition, change in control, or
910 designation as an executive officer from the department. In order to obtain such approval,
911 such person or group of persons acting in concert shall:

912 (1) File an application with the department in such form as the department may prescribe
913 from time to time;

914 (2) Provide such other information as the department may require concerning the
915 financial responsibility, background, experience, and activities of the applicant, its
916 directors and executive officers, if a corporation, and its members, if applicable, and of
917 any proposed new directors, executive officers, members, or ultimate equitable owners
918 of the licensee; and

- 919 (3) Pay such application fee as the department may prescribe.
- 920 (b) The department may prescribe additional requirements for approval of such
921 acquisition, change in control, or designation as an executive officer as a result of such
922 acquisition or other change in control through rules and regulations.
- 923 (c) If the application is denied, the department shall notify the applicant of the denial and
924 the reasons for the denial.
- 925 (d) The application provisions of this Code section shall not apply to:
- 926 (1) An acquisition by a passive investor, provided that such person submits
927 documentation to the department, in a form prescribed by the department, establishing
928 that such person meets the criteria for a passive investor prior to such acquisition. The
929 failure to provide acceptable documentation establishing that the person qualifies as a
930 passive investor or to continuously satisfy the passive investor requirements shall require
931 the filing of a change of control application; ~~or~~
- 932 (2) An acquisition of a licensee by a person licensed by the department under this article,
933 provided that:
- 934 (A) The person has not had a license revoked or suspended in any jurisdiction;
- 935 (B) The person is well-managed and has received at least a satisfactory rating for
936 compliance and supervision at its most recent examination by the department or a state
937 agency whose money transmitter regulatory program has been accredited by the
938 appropriate governing authority;
- 939 (C) The resulting entity or entities are projected to meet the financial condition
940 requirements established by this article;
- 941 (D) Neither the person nor the licensee to be acquired will implement any material
942 changes to their respective business plans as a result of the acquisition; and
- 943 (E) The person provides the department with prior notice of the acquisition and attests
944 to the requirements provided in this paragraph in a form prescribed by the department.
945 If the department does not approve such notice of acquisition within 30 days of the date

946 on which the notice was determined by the department to be complete, the notice is
947 deemed approved. If the department disapproves such notice of acquisition, the
948 acquiring person shall be required to file a change of control application; or
949 (3) A change of control of a licensee under any of the following circumstances, provided
950 that the licensee provides written notice to the department no later than ten business days
951 after the effective date of the change:

952 (A) A designation of a person to act as a proxy for the sole purpose of voting at a
953 designated meeting of the shareholders or holders of voter shares or voting interests of
954 a licensee or person in control of a licensee;

955 (B) An acquisition of an interest in a licensee by a person by bequest, descent, or
956 survivorship;

957 (C) An acquisition of an interest in a licensee by a person as a personal representative,
958 custodian, guardian, conservator, or trustee, as an officer appointed by a court of
959 competent jurisdiction, or by operation of law;

960 (D) An acquisition of an interest in a licensee by a person that is exempt from licensure
961 pursuant to Code Section 7-1-682;

962 (E) A public offering of securities of a licensee or person in control of a licensee; or
963 (F) An internal reorganization of a person in control of a licensee where the person in
964 control of the licensee remains the same.

965 (e) If the department determines that any person acquiring control of a licensee pursuant
966 to subparagraph (d)(3)(A), (d)(3)(B), or (d)(3)(C) of this Code section does not meet the
967 requirements of subsection (b) or (c) of Code Section 7-1-684, the department may require
968 the filing of a change in control application as provided in this Code section."

969 **SECTION 28.**

970 Said title is further amended by revising subsection (d), paragraph (3) of subsection (f), and
971 subsections (h) and (j) of Code Section 7-1-689, relating to record keeping, investigations

972 and examinations by department, subpoenas, confidentiality, and limitations on civil liability,
973 as follows:

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

981 "(3) Each licensee or person subject to this article shall make available to the department,
982 upon request, any books and records relating to ~~the activities of selling payment~~
983 ~~instruments or~~ the transmission of money;"

984 "(h) The department, in its discretion, may:

985 (1) Make such public or private examination or investigation within or outside of this
986 state as it deems necessary to determine whether any person has violated this article, any
987 rule or regulation, or order issued under this article, to aid in the enforcement of this
988 article, or to assist in the prescribing of rules and regulations pursuant to this article;

989 (2) Require or permit any person to file a statement in writing, under oath or otherwise,
990 as to all the facts and circumstances concerning the matter to be investigated;

991 (3) Request any financial data from an applicant or licensee; ~~and~~

992 (4) Conduct an on-site examination of a licensee or authorized agent at any location of
993 the licensee or authorized agent without prior notice to the licensee or authorized agent.

994 The licensee shall pay all reasonably incurred costs of the examination when the
995 department examines the operations of its authorized agent. The department is authorized
996 to net its out-of-state travel expenses incurred as a result of an examination or
997 investigation of a licensee or authorized agent against the payment from the licensee; and

998 (5) Investigate any person asserting to be exempt from licensure for the purpose of
 999 determining whether such person satisfies an exemption set forth in Code Section
 1000 7-1-682."

1001 "(j) The department may issue and apply to enforce subpoenas in this state at the request
 1002 of any government agency, department, organization, or entity regulating ~~the sale of~~
 1003 ~~payment instruments~~ or money transmission in another state if the activities constituting
 1004 the alleged violation for which the information is sought would be a violation of this article
 1005 if the alleged activities had occurred in this state."

1006 **SECTION 29.**

1007 Said title is further amended by revising Code Section 7-1-690, relating to enforcement and
 1008 enactment of rules and regulations, as follows:

1009 "7-1-690.

1010 (a) Without limiting the power conferred by Article 1 of this chapter, the department may
 1011 make reasonable rules and regulations, not inconsistent with law, for the interpretation and
 1012 enforcement of this article.

1013 (b) The department is authorized to enact rules and regulations that apply solely to persons
 1014 engaged in money transmission ~~or the sale of payment instruments~~ involving virtual
 1015 currency. The department shall enact such rules and regulations it finds necessary to:

1016 (1) Foster the growth of businesses engaged in money transmission ~~or the sale of~~
 1017 ~~payment instruments~~ involving virtual currency in Georgia and spur state economic
 1018 development;

1019 (2) Ensure the continued solvency, safety, soundness, and prudent conduct of persons
 1020 engaged in money transmission ~~or the sale of payment instruments~~ involving virtual
 1021 currency;

1022 (3) Ensure fair, timely, and equitable fulfillment of the financial obligations of such
 1023 persons;

- 1024 (4) Protect customers of businesses engaged in money transmission ~~or the sale of~~
 1025 ~~payment instruments~~ involving virtual currency from financially impaired or insolvent
 1026 providers of such services;
- 1027 (5) Encourage high standards of honesty, transparency, fair business practices, and
 1028 public responsibility;
- 1029 (6) Eliminate financial fraud, other criminal abuse, and unethical conduct in the industry;
 1030 and
- 1031 (7) Ensure businesses engaged in money transmission ~~or the sale of payment instruments~~
 1032 involving virtual currency provide customers with timely and understandable information
 1033 in order that customers may make informed decisions about virtual currency products and
 1034 services."

1035

SECTION 30.

1036 Said title is further amended by revising Code Section 7-1-691, relating to prohibited
 1037 activities while engaged in sale of checks or money transmission, as follows:

1038 "7-1-691.

1039 It shall be prohibited for any person engaged in ~~the sale of checks or~~ money transmission
 1040 in this state, including any person required to be licensed under this article, to:

- 1041 (1) ~~Sell payment instruments~~ Engage in money transmission as an agent of a principal
 1042 ~~seller~~ who is not exempt from the licensure requirements under Code Section 7-1-682 and
 1043 has not obtained a license hereunder, and any person who does so shall be deemed to be
 1044 the principal seller or issuer of the payment instrument ~~thereof~~ and not merely an agent
 1045 and shall be liable to the payment instrument holder or remitter as the principal seller;
- 1046 (2) Receive, transmit, or handle monetary value on behalf of another or issue a payment
 1047 instrument and not be exempt from licensure under Code Section 7-1-682, and any person
 1048 who does so shall be liable to the payment instrument holder for the payment thereof to

1049 the same extent as a drawer of a negotiable instrument, whether or not the payment
1050 instrument is a negotiable instrument under Article 3 of Title 11;

1051 (3) Fail to transmit ~~moneys~~ money received within ~~five-business~~ ten days of receiving
1052 such ~~moneys~~ money, unless the agreement between the licensee and the customer
1053 instructs the licensee to forward the money at a time that is beyond ten days of the date
1054 on which the money was received for transmission; or

1055 (4) Engage in any activity that would subject a licensee to suspension or revocation of
1056 its license under this article or any activity that the department may prohibit pursuant to
1057 rule or regulation, whether or not the person has a license;

1058 (5) Fail to honor a valid payment instrument issued by a money transmitter that has been
1059 properly presented by the payee to a third party; or

1060 (6) Fail to issue a refund to the customer within ten days of receipt of the customer's
1061 written request for a refund of money received for transmission, unless any of the
1062 following occurs:

1063 (A) The money has already been transmitted;

1064 (B) Instructions have already been given committing an equivalent amount of money
1065 to the person designated by the customer within ten days of the date on which the
1066 money was received for transmission;

1067 (C) The agreement between the licensee and the customer instructs the licensee to
1068 forward the money at a time that is beyond ten days of the date on which the money
1069 was received for transmission. If funds have not yet been forwarded in accordance with
1070 the terms of the agreement between the licensee and the customer, the licensee shall
1071 issue a refund;

1072 (D) The refund is requested for a transaction that the licensee has not completed based
1073 on a reasonable belief that a crime or violation of law, rule, or regulation has occurred,
1074 is occurring, or may occur;

1075 (E) The refund request does not enable the licensee to identify the customer, the
1076 customer's contact information, and the particular transaction to be refunded if the
1077 customer has multiple transactions pending;

1078 (F) The money was received for transmission pursuant to a written agreement between
1079 the licensee and payee to process payments for goods or services provided by the
1080 payee; or

1081 (G) The money was received for transmission subject to the Federal Remittance Rule,
1082 12 C.F.R. Part 1005, Subpart B."

1083 **SECTION 31.**

1084 Said title is further amended by revising subsection (a) of Code Section 7-1-692, relating to
1085 suspension or revocation of license, failure to issue license, grounds, and administrative
1086 review, as follows:

1087 "(a) The department may suspend or revoke an original or renewal license issued pursuant
1088 to this article or rescind the authorization to act as an authorized agent of a licensee if it
1089 finds that any ground or grounds exist which would require or warrant the refusal of an
1090 application for the issuance or renewal of a license or the authorization to act as an
1091 authorized agent of a licensee if such an application or notification were then before it. The
1092 department may also deny an application, suspend or revoke an original or renewal license
1093 issued pursuant to this article, or rescind the authorization to act as an authorized agent of
1094 a licensee if it finds that the licensee or the authorized agent has:

1095 (1) Committed any fraud, engaged in any dishonest activities, or made any
1096 misrepresentation;

1097 (2) Violated any provisions of this article, any rule or regulation issued pursuant thereto,
1098 any order issued by the department, or any other law in the course of its dealings as a
1099 licensee or authorized agent;

- 1100 (3) Made a false statement in an original or renewal application for licensure or failed
 1101 to give a true reply to a question in an original or renewal application;
 1102 (4) Demonstrated incompetency or untrustworthiness to act as a licensee or authorized
 1103 agent;
 1104 (5) Failed to pay, within 30 days after it becomes final, a judgment recovered in any
 1105 court by a claimant or creditor in an action arising out of the licensee's business in this
 1106 state of engaging in ~~the sale of payment instruments or~~ money transmission;
 1107 (6) Purposely withheld, deleted, destroyed, or altered information requested by an
 1108 examiner of the department or made false statements or misrepresentations to the
 1109 department; ~~or~~
 1110 (7) Operated in an unsafe or unsound manner; or
 1111 (8) Made a general assignment for the benefit of its creditors, suspended payment of its
 1112 obligations, or is insolvent."

1113 **SECTION 32.**

1114 Said title is further amended by revising Code Section 7-1-697, relating to no limitation on
 1115 common law liability or state prosecution, as follows:

1116 "7-1-697.

1117 Nothing in this article shall limit any statutory or common law right of any person to bring
 1118 any action in any court for any act involved in the transmission of money ~~or selling of~~
 1119 ~~payment instruments~~ or the right of the state to punish any person for any violation of any
 1120 law."

1121 **SECTION 33.**

1122 Said title is further amended by revising Code Section 7-1-698, relating to continuing
 1123 effectiveness of existing licenses, as follows:

1124 "7-1-698.
 1125 ~~Every license in force and effect under the former provisions of this article, relating to sale~~
 1126 ~~of checks and money orders, on July 1, 2014, shall remain in full force and effect on July~~
 1127 ~~1, 2014, and all such existing licensees shall be required to renew their licenses pursuant~~
 1128 ~~to Code Section 7-1-685. Any person previously approved by the department as either a~~
 1129 ~~money transmitter licensee or a seller of payment instruments licensee who holds such~~
 1130 ~~license in an active status as of July 1, 2023, shall be deemed to be a money transmitter~~
 1131 ~~licensee as of that date and authorized to engage in all activities included within the~~
 1132 ~~definition of money transmission as of that date. Any license application pending as of~~
 1133 ~~July 1, 2023, for a seller of payment instruments license shall be deemed to be an~~
 1134 ~~application for a money transmitter license as of that date.~~"

1135 **SECTION 34.**

1136 Said title is further amended by revising Code Section 7-1-703, relating to investigation of
 1137 applicants and background checks of employees relative to cashing of payment instruments,
 1138 as follows:

1139 "7-1-703.

1140 (a) As used in this Code section, the term 'conviction data' means a record of a finding,
 1141 verdict, or plea of guilty or plea of nolo contendere with regard to any crime, regardless of
 1142 whether an appeal of the conviction has been sought.

1143 ~~(a)~~(b) The department shall conduct an investigation of every applicant for licensure to
 1144 determine the financial responsibility, experience, character, and general fitness of such
 1145 applicant. The department may issue the applicant a license to cash payment instruments
 1146 if the department determines to its general satisfaction that:

1147 (1) The applicant is financially sound and responsible and able to cash payment
 1148 instruments in an honest, fair, and efficient manner and with the confidence and trust of
 1149 the community; and

1150 (2) All conditions for licensure set forth in this article or the rules and regulations of the
1151 department have been satisfied.

1152 ~~(b)~~(c) The department shall not issue a license or may revoke a license if it finds that the
1153 applicant or licensee; any person who is a director, officer, partner, ~~agent~~, covered
1154 employee, or ultimate equitable owner of the applicant or licensee; or any individual who
1155 directs the affairs of or controls or establishes policy for the applicant or licensee has been
1156 convicted of a felony in any jurisdiction or of a crime which, if committed within this state,
1157 would constitute a felony under the laws of this state. For the purposes of this article, a
1158 person shall be deemed to have been convicted of a crime if such person shall have pleaded
1159 guilty or nolo contendere to a charge thereof before a court or federal magistrate or shall
1160 have been found guilty thereof by the decision or judgment of a court or federal magistrate
1161 or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension
1162 thereof and regardless of whether first offender treatment without adjudication of guilt
1163 pursuant to the charge was entered or an adjudication or sentence was otherwise withheld
1164 or not entered on that charge, unless and until such plea of guilty or such decision,
1165 judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful
1166 judicial process or until probation, sentence, or both probation and sentence of a first
1167 offender have been successfully completed and documented or unless the person convicted
1168 of the crime shall have received a pardon therefor from the President of the United States
1169 or the governor or other pardoning authority in the jurisdiction where the conviction
1170 occurred ~~or shall have received an official certification of pardon granted by the state's~~
1171 ~~pardoning body where the conviction occurred which removes the legal disabilities~~
1172 ~~resulting from such conviction and restores civil and political rights.~~

1173 ~~(c)~~(d) The department shall be authorized to obtain conviction data with respect to any
1174 applicant or licensee; any person who is a director, officer, partner, ~~agent~~, covered
1175 employee, or ultimate equitable owner of the applicant or licensee; or any individual who
1176 directs the affairs of or controls or establishes policy for the applicant or licensee. ~~The~~

1177 ~~department may submit directly to the Georgia Crime Information Center two complete~~
1178 ~~sets of fingerprints of such person, together with the required records search fees and such~~
1179 ~~other information as may be required. Fees for background checks that the department~~
1180 ~~administers shall be sent to the department by applicants and licensees together with the~~
1181 ~~fingerprints. Criminal history record checks may be requested by the department through~~
1182 ~~the Georgia Crime Information Center and the Federal Bureau of Investigation. The~~
1183 ~~department shall have the authority to receive the results of such checks. In connection~~
1184 ~~with an application under this article, the department may use the Nationwide Multistate~~
1185 ~~Licensing System and Registry as a channeling agent for the submission of fingerprints to~~
1186 ~~the Federal Bureau of Investigation and any governmental agency or entity authorized to~~
1187 ~~receive such information for a state, national, and international criminal history background~~
1188 ~~check and the receipt of such checks by the department. Fees required for a criminal~~
1189 ~~history record check by the Georgia Crime Information Center or the Federal Bureau of~~
1190 ~~Investigation shall be paid by the applicant or licensee.~~

1191 ~~(d)~~(e) Upon request by the department, each applicant;² licensee;² any person who is a
1192 director, officer, partner, ~~agent~~, covered employee, or ultimate equitable owner of the
1193 applicant or licensee;² or any individual who directs the affairs of or controls or establishes
1194 policy for the applicant or licensee shall submit to the department ~~two complete sets of~~
1195 ~~fingerprints, the required records search fees, and such other information as may be~~
1196 ~~required. Fees for background checks that the department administers shall be submitted~~
1197 ~~to the department by applicants or licensees together with ~~two complete sets of~~ fingerprints,~~
1198 ~~and the department is authorized to net such fees to recover any costs incurred by the~~
1199 ~~department related to running the background checks. Upon receipt of fingerprints, fees,~~
1200 ~~and other required information from the department, the Georgia Crime Information Center~~
1201 ~~shall promptly transmit ~~one set of~~ fingerprints to the Federal Bureau of Investigation for~~
1202 ~~a search of bureau records and an appropriate report and shall ~~retain the other set and~~~~
1203 ~~promptly conduct a search of its own records and records to which it has access. The~~

1204 Georgia Crime Information Center shall notify the department in writing of any derogatory
1205 finding, including, but not limited to, any conviction data regarding the fingerprint records
1206 check, or if there is no such finding. All conviction data received by the department ~~or by~~
1207 ~~the applicant or licensee~~ shall be used by the ~~party requesting such data~~ department for the
1208 exclusive purpose of carrying out the responsibilities of this article, shall not be a public
1209 record, shall be confidential, and shall not be disclosed to any other person or agency
1210 except to any person or agency which otherwise has a legal right to inspect such data. All
1211 such records shall be maintained by the department ~~and the applicant or licensee~~ pursuant
1212 to laws regarding such records and the rules and regulations of the Federal Bureau of
1213 Investigation and the Georgia Crime Information Center, as applicable. ~~As used in this~~
1214 ~~Code section, the term 'conviction data' means a record of a finding, verdict, or plea of~~
1215 ~~guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal~~
1216 ~~of the conviction has been sought.~~

1217 ~~(e)~~(f) Every applicant and licensee shall be authorized and required to obtain and maintain
1218 the results of criminal background checks on covered employees. Such criminal
1219 background checks shall be ~~handled by the Georgia Crime Information Center pursuant to~~
1220 ~~Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information~~
1221 ~~Center~~ commercial background checks. Applicants and licensees shall be responsible for
1222 any applicable fees charged by the ~~Georgia Crime Information Center~~ company performing
1223 the criminal background checks. An applicant or licensee may only employ a person
1224 whose background data has been checked and has been found to be in compliance with all
1225 lawful requirements prior to the initial date of hire. This provision does not apply to
1226 directors, officers, partners, or ultimate equitable owners of applicants or licensees or to
1227 persons who direct the affairs of or control or establish policy for applicants or licensees,
1228 whose background shall have been investigated through the department before taking
1229 office, beginning employment, or securing ownership. ~~Upon receipt of information from~~
1230 ~~the Georgia Crime Information Center that is incomplete or that indicates a covered~~

1231 ~~employee has a criminal record in any state other than Georgia, the employer shall submit~~
1232 ~~to the department two complete sets of fingerprint cards for such person, together with the~~
1233 ~~applicable fees and any other required information. The department shall submit such~~
1234 ~~fingerprints as provided in subsection (d) of this Code section. The department shall be~~
1235 ~~entitled to review the files of any applicant or licensee to determine whether the required~~
1236 ~~commercial background checks have been conducted and whether all covered employees~~
1237 ~~are qualified. Notwithstanding the requirement that applicants and licensees conduct such~~
1238 ~~commercial background checks, the department shall retain the right to obtain conviction~~
1239 ~~data on covered employees of applicants and licensees pursuant to subsection (d) of this~~
1240 ~~Code section.~~

1241 ~~(f) Applicants and licensees shall have the primary responsibility for obtaining background~~
1242 ~~checks on covered employees. The department shall be entitled to review the files of any~~
1243 ~~applicant or licensee to determine whether the required background checks have been run~~
1244 ~~and whether all covered employees are qualified. The department shall be authorized to~~
1245 ~~discuss the status of employee background checks with applicants and licensees.~~
1246 ~~Notwithstanding any other provisions in this article, the department shall retain the right~~
1247 ~~to obtain conviction data on covered employees of applicants and licensees."~~

1248

SECTION 35.

1249 Said title is further amended by revising subsection (c) of Code Section 7-1-705, relating to
1250 written notice of claims against licensee, judgments, or other misconduct by employees,
1251 directors, or others and written notice of change of executive officer, as follows:

1252 "(c) Unless prior approval of a change in executive officer is required under Code Section
1253 7-1-705.1 and notwithstanding subsection ~~(e)~~ (f) of Code Section 7-1-703 requiring a
1254 criminal background check prior to the initial date of hire, a licensee shall notify the
1255 department in writing of any change of executive officer in such a manner that the notice
1256 is received by the department no later than ten business days after the effective date of the

1257 change. In the event of such change, the licensee shall initiate a criminal background check
1258 no later than ten business days after the effective date of the change."

1259 **SECTION 36.**

1260 Said title is further amended by revising subsection (c) of Code Section 7-1-707, relating to
1261 required endorsement by licensee, immediate payments, deferment of payment, identification
1262 requirements, and acceptable fee for services, as follows:

1263 "(c) Notwithstanding the provisions of subsection (b) of this Code section, checks may be
1264 accepted for collection with payment deferred where the licensee has posted a surety bond
1265 in the same manner as prescribed for licensed money transmitters ~~or licensed payment~~
1266 ~~instrument sellers~~ under Code Section 7-1-683.2 and under the same conditions as set forth
1267 under Code Section 7-1-687. The surety bond shall be in the aggregate amount of
1268 \$10,000.00 for each location operated by the licensee, if the licensee operates three or
1269 fewer locations, plus \$5,000.00 per location for the fourth and fifth locations operated by
1270 the licensee, plus \$1,000.00 for each location operated by the licensee in excess of the fifth
1271 location. The bond shall be in a form satisfactory to the department and shall run to the
1272 State of Georgia for the benefit of any claimant against the licensee arising out of the
1273 licensee's business of cashing payment instruments with payment deferred in this state.
1274 The bond shall not be canceled by either the licensee or the corporate surety except upon
1275 notice to the department by registered or certified mail, statutory overnight delivery with
1276 return receipt requested, or electronically through the Nationwide Multistate Licensing
1277 System and Registry, and such cancellation shall be effective no sooner than 30 days after
1278 receipt by the department of such notice. In no event shall payment of a check be deferred
1279 past the time the licensee has collected on the check. Upon collection, payment shall be
1280 made immediately to the party from whom the licensee accepted the check."

1281 **SECTION 37.**

1282 Said title is further amended by repealing and reserving Article 5 of Chapter 1, relating to
1283 international banking corporations and bank agencies.

1284 **SECTION 38.**

1285 Said title is further amended by revising Code Section 7-1-731, relating to "domestic
1286 international banking facility" defined, as follows:

1287 "7-1-731.

1288 As used in this article, the term 'domestic international banking facility' means the location
1289 within this state of any banking office, other than an ~~'international bank agency,' as defined~~
1290 ~~in Code Section 7-1-710; a foreign bank branch or foreign bank agency as defined in Code~~
1291 Section 7-1-1100, which derives its funds (1) from sources outside of the United States, (2)
1292 from another domestic international banking facility, or (3) from temporary advances from
1293 its parent organization and employs those funds for banking purposes outside of the United
1294 States or through its parent organization, but does not accept deposits subject to check or
1295 draft. A domestic international banking facility, when properly established pursuant to this
1296 article, shall not be considered to be a 'branch office' or 'main office' as defined in Code
1297 Section 7-1-600."

1298 **SECTION 39.**

1299 Said title is further amended by revising paragraphs (3) and (4) of subsection (a) of Code
1300 Section 7-1-845, relating to miscellaneous felonies and when punished as misdemeanors, as
1301 follows:

1302 "(3) Willfully engages in the business of:

1303 (A) A bank in violation of Code Section 7-1-241;

1304 (B) A trust company in violation of Code Section 7-1-242;

1305 (C) A credit union in violation of Code Section 7-1-633;

- 1306 (D) ~~Selling payment instruments~~ Money transmission before receiving a license as
 1307 required by Code Section 7-1-681;
- 1308 (E) ~~An international bank agency before receiving the license required by Code Section~~
 1309 ~~7-1-713; A foreign bank branch or foreign bank agency before receiving the license~~
 1310 ~~required by Article 14 of this chapter or a foreign bank representative office before~~
 1311 ~~being registered with the department as required by Article 14 of this chapter;~~
- 1312 (F) A business development corporation before approval of the department is granted
 1313 under Code Section 7-1-743;
- 1314 (G) Transacting business either directly or indirectly as a mortgage loan originator,
 1315 mortgage broker, or mortgage lender unless licensed by the department or exempt from
 1316 licensing pursuant to Code Section 7-1-1001; or
- 1317 (H) Making installment loans unless licensed by the department or exempt from
 1318 licensing requirements pursuant to Code Section 7-3-4; or
- 1319 (4) Being an agent of a money transmitter licensee or such agent's employee who is
 1320 authorized to sell or issue payment instruments on behalf of a licensee, issues payment
 1321 instruments directly or indirectly to or for his or her own benefit, or sells or issues
 1322 payment instruments without accepting funds therefor or sells or issues payment
 1323 instruments and willfully fails to remit to the licensee the proceeds from the sale or
 1324 issuance of such payment instruments within five business days from the date of such sale
 1325 or issuance."

1326 **SECTION 40.**

1327 Said title is further amended by revising subparagraph (E) of paragraph (6) of Code Section
 1328 7-1-911, relating to definitions relative to records and reports of currency transactions, as
 1329 follows:

1330 "(E) ~~An international bank agency doing business in this state on April 1, 1975, pursuant~~
 1331 ~~to the former 'International Bank Agency Act,' approved April 6, 1972 (Ga. L. 1972, p.~~

1332 ~~H40), or A foreign bank branch or foreign bank agency authorized to do business in this~~
 1333 state pursuant to ~~Article 5~~ Article 14 of this chapter; or"

1334 **SECTION 41.**

1335 Said title is further amended by revising paragraphs (14) and (17) of subsection (a) of Code
 1336 Section 7-1-1001, relating to exemption for certain persons and entities, registration
 1337 requirements, authorized actions of licensed mortgage lenders, and violations, as follows:

1338 "(14) A natural person employed by a licensed or registered mortgage broker, a licensed
 1339 or registered mortgage lender, or any person exempted from the mortgage broker or
 1340 mortgage lender licensing requirements of this article when acting within the scope of
 1341 employment and under the supervision of the mortgage broker or mortgage lender or
 1342 exempted person as an employee and not as an independent contractor, except those
 1343 natural persons exempt from licensure as a mortgage broker or mortgage lender under
 1344 paragraph (17) of this subsection. To be exempt from licensure as a mortgage broker or
 1345 mortgage lender, a natural person shall be employed by only one such employer and shall
 1346 be at all times eligible for employment in compliance with the provisions and
 1347 prohibitions of Code Section 7-1-1004. Such natural person, who meets the definition
 1348 of mortgage loan originator provided in paragraph (22) of Code Section 7-1-1000, shall
 1349 be subject to mortgage loan originator licensing requirements. A natural person against
 1350 whom a cease and desist order has become final shall not qualify for this exemption while
 1351 under the employment time restrictions of subsection ~~(o)~~ (p) of Code Section 7-1-1004
 1352 if such order was based on a violation of Code Section 7-1-1002 or 7-1-1013 or whose
 1353 license was revoked within five years of the date such person was hired;"

1354 "(17)(A) A natural person who is under an exclusive written independent contractor
 1355 agreement with any person that is a licensed mortgage broker or mortgage lender, so
 1356 long as such licensed mortgage broker or mortgage lender also meets the following
 1357 requirements, subject to the review and approval of the department:

- 1358 (i) The licensee continuously provides a surety bond as required by Code Section
1359 7-1-1003.2 in the amount of \$150,000.00 plus \$50,000.00 per exempt natural person,
1360 not to exceed a maximum of \$2 million to cover its activities as well as the activities
1361 of all of its natural persons exempted by this paragraph;
- 1362 (ii) The licensee has applied for and been granted a mortgage broker or mortgage
1363 lender license, consistent with the provisions of this article and renewable annually;
- 1364 (iii) The licensee has paid applicable fees for this license, which license fees shall be
1365 the sum of the cost of the individual mortgage broker license fees if each exempt
1366 natural person received a mortgage broker license;
- 1367 (iv) The licensee has full and direct financial responsibility for the mortgage
1368 activities of such natural person and full and direct responsibility for the proper
1369 education of such natural person, the handling of consumer complaints related to such
1370 natural person, and the supervision of the mortgage activities of such natural person.
1371 The licensee shall supervise such natural person on an ongoing and regular basis and
1372 shall be accountable for the mortgage activities of such natural person;
- 1373 (v) The licensee or the parent company if the licensee is a wholly owned subsidiary
1374 of or solely managed by the parent company:
- 1375 (I) Files reports under Section 13(a) or 15(d) of the Securities Exchange Act of
1376 1934;
- 1377 (II) Has a market capitalization in excess of \$4 billion at the time of the initial
1378 application for a mortgage broker or mortgage lender license based on the number
1379 of outstanding shares at the end of the quarter as disclosed in the most recent Form
1380 10-Q filed with the United States Securities and Exchange Commission; and
- 1381 (III) Has equity securities that are listed on the New York Stock Exchange, the
1382 National Association of Securities Dealers Automated Quotations, or other stock
1383 market approved by the department in writing;

1384 (vi) At the time of the initial application for a mortgage broker or mortgage lender
1385 license, the licensee has never had a mortgage lender license or mortgage broker
1386 license revoked or suspended in Georgia or any other state;

1387 ~~(vii) The licensee, the parent company if the licensee is a wholly owned subsidiary,~~
1388 ~~or an affiliate of the licensee if both the affiliate and licensee are wholly owned~~
1389 ~~subsidiaries of the same parent company, is licensed by the office of the~~
1390 ~~Commissioner of Insurance as an insurance company or is registered with the~~
1391 ~~Secretary of State as a broker-dealer;~~

1392 ~~(viii) The licensee is licensed as a mortgage lender or mortgage broker in ten or more~~
1393 ~~states; and~~

1394 ~~(ix)(viii)~~ At the time of the initial application for a mortgage broker or mortgage
1395 lender license, the licensee has received at least a satisfactory evaluation in the most
1396 recent examination conducted by the majority of the states in which it has a mortgage
1397 broker or mortgage lender license and has adequately addressed with the department
1398 any unsatisfactory evaluations in the most recent examination conducted by any state
1399 in which it has a mortgage broker or mortgage lender license.

1400 (B) To maintain the exemption, a natural person shall:

1401 (i) Solicit, process, place, or negotiate a mortgage loan to be brokered ~~only~~ or made
1402 solely by the licensee;

1403 (ii) Be at all times in compliance with this article, including the provisions and
1404 prohibitions of Code Section 7-1-1013, the provisions and prohibitions applicable to
1405 employees under Code Section 7-1-1004, and the department's rules and regulations;

1406 (iii) Be licensed as a mortgage loan originator in Georgia and ~~work~~ engages in
1407 residential mortgage related activity exclusively for the licensee, ~~the parent company~~
1408 ~~if the licensee is a wholly owned subsidiary, or an affiliate of the licensee if both the~~
1409 ~~affiliate and licensee are wholly owned subsidiaries of the same parent company; and~~

1410 (iv) Be licensed as an insurance agent with the office of the Commissioner of
1411 Insurance or registered as a broker-dealer agent with the Secretary of State ~~on behalf~~
1412 ~~of the licensee, the parent company of the licensee if the licensee is a wholly owned~~
1413 ~~subsidiary of the parent company, or an affiliate of the licensee if both the affiliate~~
1414 ~~and licensee are wholly owned subsidiaries of the same parent company."~~

1415 **SECTION 42.**

1416 Said title is further amended by revising subsections (a) and (c) in Code Section 7-1-1003.7,
1417 relating to approval of mortgage industry related courses, application, renewal applications,
1418 and audits, as follows:

1419 "(a) Any education provider which offers mortgage industry related courses designed to
1420 satisfy education requirements as provided in subsection ~~(c)~~ (d) of Code Section 7-1-1004
1421 and associated department rules shall be approved by the department."

1422 "(c) The initial application shall be filed with the department along with fees established
1423 by rule, no portion of which shall be refunded or prorated. Upon receipt of an application,
1424 the department shall conduct such investigation as it deems necessary to determine that the
1425 applicant and the individuals who direct the affairs or establish policy for the applicant,
1426 including the officers, directors, or the equivalent, are of good character and ethical
1427 reputation; that the applicant and such persons meet the requirements of subsection ~~(h)~~ (i)
1428 of Code Section 7-1-1004; that the applicant and such persons demonstrate reasonable
1429 financial responsibility; that the applicant has and maintains a registered agent for service
1430 in this state; and that the applicant and such persons are qualified by education and
1431 experience to present courses directly related to the mortgage brokering process."

SECTION 43.

1432
1433 Said title is further amended by revising Code Section 7-1-1004, relating to investigation of
1434 applicant and its officers, audit, education, experience, and other requirements relative to
1435 licensees and registrants, as follows:

1436 "7-1-1004.

1437 (a) As used in this Code section, the term 'conviction data' means a record of a finding,
1438 verdict, or plea of guilty or plea of nolo contendere with regard to any crime, regardless of
1439 whether an appeal of the conviction has been sought.

1440 (b) Upon receipt of an application for license or registration, the department shall conduct
1441 such investigation as it deems necessary to determine that the mortgage broker and
1442 mortgage lender applicant and the individuals who direct the affairs or establish policy for
1443 the mortgage broker and mortgage lender applicant, including the officers, directors, or the
1444 equivalent, are of good character and ethical reputation; that the mortgage broker and
1445 mortgage lender applicant is not disqualified for licensure as a result of adverse
1446 administrative civil or criminal findings in any jurisdiction; that the mortgage broker and
1447 mortgage lender applicant and such persons meet the requirements of subsection ~~(h)~~ (i) of
1448 this Code section; that the mortgage broker and mortgage lender applicant and such persons
1449 demonstrate reasonable financial responsibility; that the mortgage broker and mortgage
1450 lender applicant has reasonable policies and procedures to receive and process customer
1451 grievances and inquiries promptly and fairly; and that the mortgage broker and mortgage
1452 lender applicant has and maintains a registered agent for service in this state.

1453 ~~(b)~~(c) The department shall not license or register any mortgage broker and mortgage
1454 lender applicant unless it is satisfied that the mortgage broker and mortgage lender
1455 applicant may be expected to operate its mortgage lending or brokerage activities in
1456 compliance with the laws of this state and in a manner which protects the contractual and
1457 property rights of the citizens of this state.

1458 ~~(e)~~(d) The department may establish by rule or regulation minimum education or
1459 experience requirements for an applicant for a mortgage broker license or renewal of such
1460 a license.

1461 ~~(d)~~(e) Upon receipt of an application for a mortgage loan originator license, the department
1462 shall conduct such investigation as it deems necessary to determine that the mortgage loan
1463 originator applicant:

1464 (1) Has never had a mortgage loan originator license revoked in any governmental
1465 jurisdiction, except that a subsequent formal vacation of such revocation shall not be
1466 deemed a revocation;

1467 (2) Has not been convicted of, or pleaded guilty or nolo contendere to, a felony in a
1468 domestic, foreign, or military court; provided, however, that any pardon of a conviction
1469 shall not be a conviction for purposes of this subsection;

1470 (3) Has demonstrated financial responsibility, character, and general fitness such as to
1471 command the confidence of the community and to warrant a determination that the
1472 mortgage loan originator will operate honestly, fairly, and efficiently within the purposes
1473 of this article;

1474 (4) Has completed the prelicensing education requirement described in subsection ~~(e)~~ (f)
1475 of this Code section; and

1476 (5) Has passed a written test that meets the test requirement described in subsection
1477 ~~(f)~~ (h) of this Code section.

1478 ~~(e)~~(f)(1) An individual shall complete at least 20 hours of prelicensing education
1479 courses reviewed and approved by the Nationwide Multistate Licensing System and
1480 Registry based upon reasonable standards. Review and approval of a prelicensing
1481 education course shall include review and approval of the course provider. The 20 hours
1482 of prelicensing education shall include at least:

1483 (A) Three hours of federal law and regulations;

- 1484 (B) Three hours of ethics, which shall include instruction on fraud, consumer
1485 protection, and fair lending issues; and
- 1486 (C) Two hours of training related to lending standards for the nontraditional mortgage
1487 product marketplace.
- 1488 (2) Nothing in this subsection shall preclude any prelicensing education course, as
1489 approved by the Nationwide Multistate Licensing System and Registry, that is provided
1490 by the employer of the mortgage loan originator applicant or an entity which is affiliated
1491 with the applicant by an agency contract, or any subsidiary or affiliate of such employer
1492 or entity.
- 1493 (3) Prelicensing education may be offered either in a classroom, online, or by any other
1494 means approved by the Nationwide Multistate Licensing System and Registry.
- 1495 (4) The prelicensing education requirements approved by the Nationwide Multistate
1496 Licensing System and Registry in paragraph (1) of this subsection for any state shall be
1497 accepted as credit ~~towards~~ toward completion of prelicensing education requirements in
1498 Georgia.
- 1499 (5) A person previously licensed under this article applying to be licensed again shall
1500 prove that he or she has completed all of the continuing education requirements for the
1501 year in which the license was last held.
- 1502 (6) The department is authorized to enact rules and regulations related to the expiration
1503 of prelicensing education.
- 1504 ~~(f)(1)~~(g)(1) In order to meet the written test requirement referred to in subsection ~~(d)~~ (e)
1505 of this Code section for mortgage loan originators, an individual shall pass, in accordance
1506 with the standards established under this subsection, a qualified written test developed
1507 by the Nationwide Multistate Licensing System and Registry and administered by a test
1508 provider approved by the Nationwide Multistate Licensing System and Registry based
1509 upon reasonable standards.

1510 (2) A written test shall not be treated as a qualified written test for purposes of this
1511 subsection unless the test adequately measures the applicant's knowledge and
1512 comprehension in appropriate subject areas, including:

1513 (A) Ethics;

1514 (B) Federal law and regulation pertaining to mortgage origination;

1515 (C) State law and regulation pertaining to mortgage origination; and

1516 (D) Federal and state law and regulation, including instruction on fraud, consumer
1517 protection, the nontraditional mortgage marketplace, and fair lending issues.

1518 (3) Nothing in this subsection shall prohibit a test provider approved by the Nationwide
1519 Multistate Licensing System and Registry from providing a test at the location of the
1520 employer of the applicant or the location of any subsidiary or affiliate of the employer of
1521 the applicant or the location of any entity with which the applicant holds an exclusive
1522 arrangement to conduct the business of a mortgage loan originator.

1523 (4)(A) An individual shall not be considered to have passed a qualified written test
1524 unless the individual achieves a test score of not less than 75 percent correct answers
1525 to questions.

1526 (B) An individual may retake a test three consecutive times with each consecutive
1527 taking occurring at least 30 days after the preceding test.

1528 (C) After failing three consecutive tests, an individual shall wait at least six months
1529 before taking the test again.

1530 (D) A licensed mortgage loan originator who fails to maintain a valid license for a
1531 period of five years or longer shall retake the test, not taking into account any time
1532 during which such individual is a registered mortgage loan originator.

1533 ~~(g)(1)(h)(1)~~ In order to meet the annual continuing education requirements referred to
1534 in paragraph (2) of subsection (e) of Code Section 7-1-1005, a licensed mortgage loan
1535 originator shall complete at least eight hours of education approved in accordance with
1536 paragraph (2) of this subsection which shall include at least:

- 1537 (A) Three hours of federal law and regulations;
1538 (B) Two hours of ethics, which shall include instruction on fraud, consumer protection,
1539 and fair lending issues; and
1540 (C) Two hours of training related to lending standards for the nontraditional mortgage
1541 product marketplace.
- 1542 (2) For purposes of paragraph (1) of this subsection, continuing education courses shall
1543 be reviewed and approved by the Nationwide Multistate Licensing System and Registry
1544 based upon reasonable standards. Review and approval of a continuing education course
1545 shall include review and approval of the course provider.
- 1546 (3) Nothing in this subsection shall preclude any education course from approval by the
1547 Nationwide Multistate Licensing System and Registry that is provided by the employer
1548 of the mortgage loan originator or any entity which is affiliated with the mortgage loan
1549 originator by an agency contact, or any subsidiary or affiliate of such employer or entity.
- 1550 (4) Continuing education may be offered either in a classroom, online, or by any other
1551 means approved by the Nationwide Multistate Licensing System and Registry.
- 1552 (5) A licensed mortgage loan originator, except for as provided for in paragraph (9) of
1553 this subsection and subsection (g) of Code Section 7-1-1005, shall only receive credit for
1554 a continuing education course in the year in which the course is taken and shall not take
1555 the same approved course in the same or successive years to meet the annual
1556 requirements for continuing education.
- 1557 (6) A licensed mortgage loan originator who is an approved instructor of an approved
1558 continuing education course may receive credit for the licensed mortgage loan
1559 originator's own annual continuing education requirement at the rate of two hours of
1560 credit for every one hour taught.
- 1561 (7) An individual having successfully completed the education requirements approved
1562 by the Nationwide Multistate Licensing System and Registry in paragraph (1) of this

1563 subsection for any state shall be accepted as credit ~~towards~~ toward completion of
1564 continuing education requirements in Georgia.

1565 (8) A licensed mortgage loan originator who subsequently becomes unlicensed shall
1566 complete the continuing education requirements for the last year in which the license was
1567 held prior to issuance of a new or renewed license or the prelicensing education in the
1568 event the prelicensing education has expired pursuant to the rules and regulations of the
1569 department.

1570 (9) An individual meeting the requirements of subsection (e) of Code Section 7-1-1005
1571 may make up any deficiency in continuing education as established by rule or regulation
1572 of the department.

1573 ~~(h)~~(i) The department shall not issue or may revoke a license or registration if it finds that
1574 the mortgage loan originator, mortgage broker, or mortgage lender applicant or licensee,
1575 or any person who is a director, officer, partner, covered employee, or ultimate equitable
1576 owner of 10 percent or more of the mortgage broker or mortgage lender applicant,
1577 registrant, or licensee or any individual who directs the affairs or establishes policy for the
1578 mortgage broker or mortgage lender applicant, registrant, or licensee, has been convicted
1579 of a felony in any jurisdiction or of a crime which, if committed within this state, would
1580 constitute a felony under the laws of this state. Other than a mortgage loan originator, for
1581 the purposes of this article, a person shall be deemed to have been convicted of a crime if
1582 such person shall have pleaded guilty or nolo contendere to a charge thereof before a court
1583 or federal magistrate or shall have been found guilty thereof by the decision or judgment
1584 of a court or federal magistrate or by the verdict of a jury, irrespective of the
1585 pronouncement of sentence or the suspension thereof, and regardless of whether first
1586 offender treatment without adjudication of guilt pursuant to the charge was entered, or an
1587 adjudication or sentence was otherwise withheld or not entered on the charge, unless and
1588 until such plea of guilty, or such decision, judgment, or verdict, shall have been set aside,
1589 reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or

1590 both probation and sentence of a first offender have been successfully completed and
1591 documented, or unless the person convicted of the crime shall have received a pardon
1592 therefor from the President of the United States or the Governor or other pardoning
1593 authority in the jurisdiction where the conviction occurred ~~or shall have received an official~~
1594 ~~certification or pardon granted by the state's pardoning body in the jurisdiction where the~~
1595 ~~conviction occurred.~~ For purposes of this article, a mortgage loan originator shall be
1596 deemed to have been convicted of a crime if he or she has pleaded guilty to, been found
1597 guilty of, or entered a first offender or nolo contendere plea to a felony in a domestic,
1598 foreign, or military court; provided, however, that any pardon of a conviction shall not be
1599 a conviction.

1600 ~~(i)(j)~~ The department shall be authorized to obtain conviction data with respect to any
1601 mortgage loan originator, mortgage broker, or mortgage lender applicant or any person
1602 who is a director, officer, partner, covered employee, or ultimate equitable owner of 10
1603 percent or more of the mortgage broker or mortgage lender applicant and any individual
1604 who directs the affairs of the company or establishes policy. ~~The department may directly~~
1605 ~~submit to the Georgia Crime Information Center two complete sets of fingerprints of such~~
1606 ~~applicant or such person, together with the required records search fees and such other~~
1607 ~~information as may be required. Fees for background checks that the department~~
1608 ~~administers shall be sent to the department by applicants and licensees together with the~~
1609 ~~fingerprints. Mortgage broker and mortgage lender applicants, licensees, and registrants~~
1610 ~~shall have the primary responsibility for obtaining background checks of covered~~
1611 ~~employees which are defined as employees who work in this state and also have the~~
1612 ~~authority to enter, delete, or verify any information on any mortgage loan application form~~
1613 ~~or document. The department shall, however, retain the right to obtain conviction data on~~
1614 ~~covered employees. Criminal history record checks may be requested by the department~~
1615 ~~through the Georgia Crime Information Center and the Federal Bureau of Investigation.~~
1616 The department shall have the authority to receive the results of such checks. Fees required

1617 for a criminal history record check by the Georgia Crime Information Center or the Federal
1618 Bureau of Investigation shall be paid by the applicant or licensee.

1619 ~~(j)~~(k) In connection with an application for licensing with respect to any mortgage loan
1620 originator applicant, mortgage broker, or lender applicant, at the direction of the
1621 department, the applicant shall, at a minimum, furnish to the Nationwide Multistate
1622 Licensing System and Registry information concerning the applicant's identity, including:

1623 (1) Fingerprints for submission to the Federal Bureau of Investigation and any
1624 governmental agency or entity authorized to receive such information for a state, national,
1625 and international criminal history background check;

1626 (2) Personal history and experience in a form prescribed by the Nationwide Multistate
1627 Licensing System and Registry, including the submission of authorization for the
1628 Nationwide Multistate Licensing System and Registry and the department to obtain:

1629 (A) An independent credit report obtained from a consumer reporting agency described
1630 in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Section 1681a~~(f)~~(p); and

1631 (B) Information related to any administrative, civil, or criminal findings by any
1632 governmental jurisdiction;

1633 (3) For the purposes set forth in this subsection and in order to reduce the points of
1634 contact which the Federal Bureau of Investigation may have to maintain for purposes of
1635 such ~~section~~ subsection, the department may use the Nationwide Multistate Licensing
1636 System and Registry as a channeling agent for requesting information from and
1637 distributing information to the Department of Justice or any governmental agency; and

1638 (4) For the purposes of this subsection and in order to reduce the points of contact which
1639 the department may have to maintain for purposes of such subsection, the department
1640 may use the Nationwide Multistate Licensing System and Registry as a channeling agent
1641 for requesting and distributing information to and from any source so directed by the
1642 department.

1643 ~~(k)(l)~~ Every mortgage broker and mortgage lender licensee, registrant, and applicant shall
1644 be authorized and required to obtain criminal background checks on covered employees.
1645 Such criminal background checks shall be ~~handled by the Georgia Crime Information~~
1646 ~~Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia~~
1647 ~~Crime Information Center~~ commercial background checks. Licensees, registrants, and
1648 applicants shall be responsible for any applicable fees charged by the ~~center~~ company
1649 performing the commercial background check. ~~A background check shall be initiated for~~
1650 ~~a person in the employ of a licensee, registrant, or applicant within ten days of the date of~~
1651 ~~initial hire and be completed with satisfactory results within the first 90 days of~~
1652 ~~employment~~ may only employ a covered employee whose criminal history has been
1653 checked in this manner and has been found to be in compliance with all lawful
1654 requirements prior to the initial date of hire. This provision shall not apply to directors,
1655 officers, partners, agents, or ultimate equitable owners of 10 percent or more or to persons
1656 who direct the company's affairs or establish policy, whose background shall have been
1657 investigated through the department before taking office, beginning employment, or
1658 securing ownership. ~~Upon receipt of information from the Georgia Crime Information~~
1659 ~~Center that is incomplete or that indicates an employee has a criminal record in any state~~
1660 ~~other than Georgia, the employer shall submit to the department two complete sets of~~
1661 ~~fingerprints of such person, together with the applicable fees and any other required~~
1662 ~~information. The department shall submit such fingerprints as provided in subsection (i)~~
1663 ~~of this Code section. The department shall be entitled to review any applicant's,~~
1664 ~~registrant's, or licensee's files to determine whether the required commercial background~~
1665 ~~checks have been conducted and whether all covered employees are qualified.~~
1666 Notwithstanding the requirement that licensees, registrants, and applicants conduct such
1667 commercial background checks on covered employees, the department shall retain the right
1668 to obtain conviction data on covered employees pursuant to subsection (j) of this Code
1669 section.

1670 ~~(h)~~(m) Upon receipt of fingerprints, fees, and other required information from the
1671 department, the Georgia Crime Information Center shall promptly transmit ~~one set of~~
1672 fingerprints to the Federal Bureau of Investigation for a search of bureau records and an
1673 appropriate report and shall ~~retain the other set and~~ promptly conduct a search of its own
1674 records and records to which it has access. The Georgia Crime Information Center shall
1675 notify the department in writing of any derogatory finding, including, but not limited to,
1676 any conviction data regarding the fingerprint records check, or if there is no such finding.
1677 All conviction data received by the department ~~or by the applicant, registrant, or licensee~~
1678 shall be used by the ~~party requesting such data for the~~ department exclusive purpose of
1679 carrying out the responsibilities of this article, shall not be a public record, shall be
1680 privileged, and shall not be disclosed to any other person or agency except to any person
1681 or agency which otherwise has a legal right to inspect the file. ~~The department shall be~~
1682 ~~entitled to review any applicant's, registrant's, or licensee's files to determine whether the~~
1683 ~~required background checks have been run and whether all covered employees are~~
1684 ~~qualified. The department shall be authorized to discuss the status of employee~~
1685 ~~background checks with licensees.~~ All such records shall be maintained by the department
1686 and the applicant or licensee or registrant pursuant to laws regarding such records and the
1687 rules and regulations of the Federal Bureau of Investigation and the Georgia Crime
1688 Information Center, as applicable. ~~As used in this subsection, 'conviction data' means a~~
1689 ~~record of a finding, verdict, or plea of guilty or plea of nolo contendere with regard to any~~
1690 ~~crime, regardless of whether an appeal of the conviction has been sought, subject to the~~
1691 ~~conditions set forth in subsection (h) of this Code section. Violation of this Code section~~
1692 ~~may subject a licensee or registrant to the revocation of its license or registration.~~
1693 (m)(n) In connection with an application for ~~licensing or registration under this Code~~
1694 ~~section~~ under this article, the department may use the Nationwide Multistate Licensing
1695 System and Registry, ~~when such service is available~~, as a channeling agent for the
1696 submission of fingerprints to the Federal Bureau of Investigation and any governmental

1697 agency or entity authorized to receive such information for a state, national, and
1698 international criminal history background check and the receipt of such checks by the
1699 department. ~~The department is authorized to set forth rules and regulations in order to~~
1700 ~~implement the provisions of this subsection.~~

1701 ~~(n)~~(o) The department may deny or revoke a license or registration or otherwise restrict
1702 a license or registration if it finds that the mortgage broker or mortgage lender applicant
1703 or any person who is a director, officer, partner, or ultimate equitable owner of 10 percent
1704 or more or person who directs the company's affairs or who establishes policy of the
1705 applicant has been in one or more of these roles as a mortgage lender, broker, or registrant
1706 whose license or registration has been denied, revoked, or suspended within five years of
1707 the date of the application.

1708 ~~(o)~~(p) The department shall not issue a license or registration to and may revoke a license
1709 or registration from a mortgage broker or mortgage lender applicant, licensee, or registrant
1710 if such person:

1711 (1) Has been the recipient of a final cease and desist order issued within the preceding
1712 five years if such order was based on a violation of subsection ~~(h)~~ (i) of this Code section
1713 or Code Section 7-1-1002 or 7-1-1013;

1714 (2) Employs any other person against whom a final cease and desist order has been
1715 issued within the preceding five years if such order was based on a violation of
1716 subsection ~~(h)~~ (i) of this Code section or Code Section 7-1-1002 or 7-1-1013; or

1717 (3) Has had his or her license revoked within five years of the date such person was hired
1718 or employs any other person who has had his or her license revoked within five years of
1719 the date such person was hired.

1720 ~~(p)~~(q) Each mortgage broker and mortgage lender applicant, licensee, and registrant shall,
1721 before hiring an employee, examine the department's public records to determine that such
1722 employee is not subject to the type of ~~cease and desist~~ order described in subsection ~~(o)~~ (p)
1723 of this Code section.

1724 ~~(q)~~(r) Within 90 days after receipt of a completed application and payment of licensing
 1725 fees prescribed by this article, the department shall either grant or deny the request for
 1726 license or registration.

1727 (r)(s) A person shall not be indemnified for any act covered by this article or for any fine
 1728 or penalty incurred pursuant to this article as a result of any violation of the law or
 1729 regulations contained in this article, due to the legal form, corporate structure, or choice of
 1730 organization of such person, including, but not limited to, a limited liability company."

1731 **SECTION 44.**

1732 Said title is further amended by revising subsection (b) of Code Section 7-1-1017, relating
 1733 to suspension or revocation of licenses, registrations, or mortgage broker education approval,
 1734 notice, judicial review, and effect on preexisting contract, as follows:

1735 "(b) Notice of the department's intention to enter an order denying an application for a
 1736 license or registration under this article or of an order suspending or revoking a license or
 1737 registration under this article shall be given to the applicant, licensee, or registrant in
 1738 writing, sent by email to the email address of record for the applicant, licensee, or
 1739 registrant, or registered or certified mail or statutory overnight delivery addressed to the
 1740 principal place of business of such applicant, licensee, or registrant. Within 20 days of the
 1741 date of the notice of intention to enter an order of denial, suspension, or revocation under
 1742 this article, the applicant, licensee, or registrant may request in writing a hearing to contest
 1743 the order. If a hearing is not requested in writing within 20 days of the date of such notice
 1744 of intention, the department shall enter a final order regarding the denial, suspension, or
 1745 revocation. ~~Any final order of the department denying, suspending, or revoking a license~~
 1746 ~~or registration shall state the grounds upon which it is based and shall be effective on the~~
 1747 ~~date of issuance. A copy thereof shall be forwarded promptly by registered or certified~~
 1748 ~~mail or statutory overnight delivery addressed to the principal place of business of such~~
 1749 ~~applicant, licensee, or registrant.~~ If a person refuses to accept service of the notice or order

1750 by registered or certified mail or statutory overnight delivery and the notice sent by email
1751 to the email address of record has not been delivered to the person, the notice or order shall
1752 be served by the commissioner or the commissioner's authorized representative under any
1753 other method of lawful service; and the person shall be personally liable to the
1754 commissioner for a sum equal to the actual costs incurred to serve the notice or order. This
1755 liability shall be paid upon notice and demand by the commissioner or the commissioner's
1756 representative and shall be assessed and collected in the same manner as other fees or fines
1757 administered by the commissioner. Any final order of the department denying, suspending,
1758 or revoking a license or registration shall state the grounds upon which it is based and shall
1759 be effective on the date of issuance. The department shall promptly send a copy of such
1760 order by mail addressed to the principal place of business of such applicant, licensee, or
1761 registrant and post a copy of such order on the Nationwide Multistate Licensing System
1762 and Registry. For purposes of this subsection, the term 'email address of record' means the
1763 email address that the applicant, licensee, or registrant has designated as their email address
1764 for regulatory contact on file with the Nationwide Multistate Licensing System and
1765 Registry."

1766 **SECTION 45.**

1767 Said title is further amended by revising subsection (b) of Code Section 7-3-4, relating to
1768 licensing requirement and exemptions relative to installment loans, as follows:

1769 "(b) This chapter shall not apply to:

1770 (1) Businesses chartered or licensed under the authority of any law of this state or of the
1771 United States as banks, trust companies, savings and loan associations, savings banks, or
1772 credit unions or to the transactions of such businesses;

1773 (2) Banks or credit unions chartered under the authority of any state which have deposits
1774 that are federally insured or to the transactions of such businesses;

- 1775 (3) Pawnbrokers, as defined in Code Section 44-12-130, or to the transactions of
1776 pawnbrokers;
- 1777 (4) The University System of Georgia or its educational units, private colleges and
1778 universities in this state and associations thereof, or student loan transactions of such
1779 educational entities;
- 1780 (5) An individual employed by a licensee or any person exempted from the licensing
1781 requirements of this chapter when acting within the scope of employment and under the
1782 supervision of the licensee or exempted person as an employee and not as an independent
1783 contractor;
- 1784 (6) Any agency, division, or instrumentality of the federal government of the United
1785 States of America; the government of the State of Georgia or the government of any other
1786 state; or any county or municipal government in the State of Georgia; and the transactions
1787 of all such governmental entities;
- 1788 (7) Retail installment transactions engaged in by retail installment sellers, as those terms
1789 are defined in Code Section 10-1-31;
- 1790 (8) Retail installment transactions engaged in by retail sellers, as those terms are defined
1791 in Code Section 10-1-2; ~~or~~
- 1792 (9) Transactions in which a lender offers a consumer a line of credit of more than
1793 \$3,000.00 but the consumer utilizes \$3,000.00 or less of such line of credit so long as
1794 there are no restrictions in place that would limit the consumer's ability to utilize more
1795 than \$3,000.00 of the line of credit at any one time; or
- 1796 (10) A tax exempt organization under Section 501(c)(3) of the Internal Revenue Code
1797 of 1986 that does not impose any interest, fees, or other charges in connection with
1798 installment loans or the servicing of such loans."

1799

SECTION 46.

1800 Said title is further amended by revising paragraph (1) of Code Section 7-3-11, relating to
1801 maximum loan amount, period, and charges, and deferments relative to installment loans, as
1802 follows:

1803 "(1) **Interest.** A licensee may charge, contract for, receive, and collect interest at a rate
1804 not to exceed 10 percent per annum of the face amount of the contract, whether repayable
1805 in one single payment or repayable in monthly or other periodic installments. On loan
1806 contracts repayable in 18 months or less, the interest may be discounted in advance; and,
1807 on contracts repayable over a greater period, the interest ~~shall~~ may be added to the
1808 principal amount of the loan. On all contracts, interest or discount shall be computed
1809 proportionately on equal calendar months;"

1810

SECTION 47.

1811 Said title is further amended by revising Code Section 7-3-42, relating to impact of felony
1812 convictions of licensee and criminal background checks relative to installment loans, as
1813 follows:

1814 "7-3-42.

1815 (a) The department shall not issue a license and may revoke a license if it finds that the
1816 applicant or licensee or any director, trustee, ~~agent~~, owner, executive officer, or covered
1817 employee of the applicant or licensee has been convicted of a felony in any jurisdiction or
1818 of a crime which, if committed within this state, would constitute a felony under the laws
1819 of this state. For the purposes of this article, a person shall be deemed to have been
1820 convicted of a crime if such person shall have pleaded guilty or nolo contendere to a charge
1821 thereof before a court or federal magistrate or shall have been found guilty thereof by the
1822 decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective
1823 of the pronouncement of sentence or the suspension thereof and regardless of whether first
1824 offender treatment without adjudication of guilt pursuant to the charge was entered or an

1825 adjudication or sentence was otherwise withheld or not entered on that charge, unless and
1826 until such plea of guilty or nolo contendere or such decision, judgment, or verdict shall
1827 have been set aside, reversed, or otherwise abrogated by lawful judicial process or until
1828 probation, sentence, or both probation and sentence of a first offender without adjudication
1829 of guilt have been successfully completed and documented or unless the person convicted
1830 of the crime shall have received a pardon therefor from the President of the United States
1831 or the governor or other pardoning authority in the jurisdiction where the conviction
1832 occurred.

1833 (b) The department shall be authorized to obtain criminal history record checks with
1834 respect to any applicant or licensee, any owner of the applicant or licensee, and any
1835 individual who is a director, trustee, executive officer, ~~agent~~, or covered employee of the
1836 applicant or licensee. Such criminal history record checks may be requested by the
1837 department through the Georgia Crime Information Center and the Federal Bureau of
1838 Investigation, and the department shall have the authority to receive the results of such
1839 checks. In connection with an application under this article, the department may use the
1840 Nationwide Multistate Licensing System and Registry as a channeling agent for the
1841 submission of fingerprints to the Federal Bureau of Investigation and any governmental
1842 agency or entity authorized to receive such information for a state, national, and
1843 international criminal history background check and the receipt of such checks by the
1844 department. Fees required for a criminal history record check by the Georgia Crime
1845 Information Center or the Federal Bureau of Investigation shall be paid by the applicant or
1846 licensee.

1847 (c) Upon receipt of fingerprints, fees, and other required information, the Georgia Crime
1848 Information Center shall promptly transmit ~~one set of~~ fingerprints to the Federal Bureau
1849 of Investigation for a search of bureau records and an appropriate report and shall ~~retain~~
1850 ~~the other set and promptly~~ conduct a search of its own records and records to which it has

1851 access. The Georgia Crime Information Center shall notify the department in writing of
1852 any finding or if there are no such findings.

1853 (d) All criminal history record checks received by the department ~~or by the applicant or~~
1854 ~~licensee~~ shall be used by the ~~party requesting such records~~ department for the exclusive
1855 purpose of carrying out the responsibilities of this article, shall not be a public record, shall
1856 be confidential and privileged, and shall not be disclosed to any other person or agency
1857 except to any person or agency which otherwise has a legal right to inspect such records.
1858 All such records received by the ~~requesting party~~ department shall be maintained in
1859 conformity with the requirements of the Georgia Crime Information Center and the Federal
1860 Bureau of Investigation, as applicable.

1861 (e) Every applicant and licensee shall be authorized and required to obtain and maintain
1862 the results of criminal history record checks on covered employees. Such criminal
1863 background checks shall be ~~handled by the Georgia Crime Information Center pursuant to~~
1864 ~~Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information~~
1865 ~~Center~~ commercial background checks. Applicants and licensees shall be responsible for
1866 any applicable fees charged by the ~~Georgia Crime Information Center~~ company performing
1867 the criminal background checks. An applicant or licensee may only employ an individual
1868 whose criminal history has been checked and has been found to be in compliance with all
1869 lawful requirements prior to the initial date of hire. This provision shall not apply to
1870 directors, owners, or executive officers of applicants or licensees, whose backgrounds shall
1871 have been investigated through the department before taking office, beginning
1872 employment, or securing ownership. The department shall be entitled to review the files
1873 of any applicant or licensee to determine whether the required commercial background
1874 checks have been conducted and whether all covered employees are qualified.
1875 Notwithstanding the requirement that applicants and licensees conduct such commercial
1876 background checks, the department shall retain the right to obtain conviction data on

1877 covered employees of applicants and licensees pursuant to subsection (b) of this Code
 1878 section.

1879 (f) Upon request by the department, an applicant or licensee shall take all steps necessary
 1880 to have an international criminal history record check performed on any directors, owners,
 1881 executive officers, and covered employees of applicants and licensees. The results of such
 1882 international criminal history record check shall be provided to the department.

1883 ~~(g) Applicants and licensees shall have the primary responsibility for obtaining criminal~~
 1884 ~~history record checks on covered employees. The department shall be entitled to review~~
 1885 ~~the files of any applicant or licensee to determine whether the required record checks have~~
 1886 ~~been run and whether all covered employees are qualified. The department shall be~~
 1887 ~~authorized to discuss the status of covered employee criminal history record checks with~~
 1888 ~~applicants and licensees. Notwithstanding any other provisions of this article, the~~
 1889 ~~department shall retain the right to obtain criminal history record checks on covered~~
 1890 ~~employees of applicants and licensees."~~

1891 **SECTION 48.**

1892 Said title is further amended by adding a new article to read as follows:

1893 "ARTICLE 14

1894 Part 1

1895 7-1-1100.

1896 As used in this article, the term:

1897 (1) 'Affiliate' has the meaning assigned by 12 U.S.C. Section 1841(k) of the Bank
 1898 Holding Company Act.

1899 (2) 'Agency,' when used in reference to an office of a foreign bank, has the meaning
 1900 assigned by 12 U.S.C. Section 3101(1) of the International Banking Act.

- 1901 (3) 'Bank' has the meaning assigned by 12 U.S.C. Section 1841(c) of the Bank Holding
1902 Company Act, except that the term does not include a foreign bank or a branch or agency
1903 of a foreign bank.
- 1904 (4) 'Bank supervisory agency' means any of the following:
- 1905 (A) An agency of another state with primary responsibility for chartering and
1906 supervising banks; or
- 1907 (B) The Office of the Comptroller of the Currency, the Federal Deposit Insurance
1908 Corporation, or the Board of Governors of the Federal Reserve System, and any
1909 successor to these agencies.
- 1910 (5) 'Branch,' when used in reference to an office of a foreign bank, has the meaning
1911 assigned by 12 U.S.C. Section 3101(3) of the International Banking Act.
- 1912 (6) 'Commissioner' means the commissioner of banking and finance.
- 1913 (7) 'Control' has the meaning assigned by 12 U.S.C. Section 1841(a) of the Bank Holding
1914 Company Act, and regulations and interpretive rulings of the Board of Governors of the
1915 Federal Reserve System.
- 1916 (8) 'Department' means the Department of Banking and Finance.
- 1917 (9) 'Deposit' has the meaning assigned by 12 U.S.C. Section 1813(l) of the Federal
1918 Deposit Insurance Act.
- 1919 (10) 'Depository institution' means an institution included for any purpose within the
1920 definition of insured depository institution as assigned by 12 U.S.C. Section 1813(c)(2)
1921 of the Federal Deposit Insurance Act.
- 1922 (11) 'Federal agency' means an agency of a foreign bank that is licensed by the
1923 Comptroller of the Currency pursuant to 12 U.S.C. Section 3102 of the International
1924 Banking Act.
- 1925 (12) 'Federal branch' means a branch of a foreign bank that is licensed by the
1926 Comptroller of the Currency pursuant to 12 U.S.C. Section 3102 of the International
1927 Banking Act.

- 1928 (13) 'Foreign bank' has the meaning assigned by 12 U.S.C. Section 3101(7) of the
1929 International Banking Act.
- 1930 (14) 'Functional regulatory agency' means a department or agency of this state, another
1931 state, the United States, or a foreign government that regulates and charters, licenses, or
1932 registers persons engaged in financial activities or activities incidental or complementary
1933 to financial activities, including activities related to banking, insurance, or securities.
- 1934 (15) 'Georgia state agency' means, when used in reference to an office of a foreign bank,
1935 an agency of a foreign bank that is located in this state and licensed pursuant to this
1936 article.
- 1937 (16) 'Georgia state bank' means a bank that is organized under the laws of the State of
1938 Georgia.
- 1939 (17) 'Georgia state branch' means, when used in reference to an office of a foreign bank,
1940 a branch of a foreign bank that is located in this state and licensed pursuant to this article.
- 1941 (18) 'Georgia state representative office' means, when used in reference to an office of
1942 a foreign bank, a representative office that is located in this state and registered pursuant
1943 to this article.
- 1944 (19) 'Home state' means the state determined to be the home state of the foreign bank
1945 under 12 U.S.C. Section 3103(c) of the International Banking Act.
- 1946 (20) 'Insolvency' means:
- 1947 (A) Inability to meet liabilities as they become due in the regular course of business;
1948 or
- 1949 (B) Insufficiency in actual cash market value of assets to pay liabilities to depositors
1950 and other creditors.
- 1951 (21) 'International Banking Act' means the federal International Banking Act of 1978,
1952 12 U.S.C. Section 3101, et seq.

- 1953 (22) 'Interstate Banking and Branching Efficiency Act' means the federal Riegle-Neal
1954 Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328,
1955 codified and subsequently amended at various sections of Title 12, United States Code.
1956 (23) 'Interstate branch' means a branch of a bank or a branch of a foreign bank, as the
1957 context requires, established, acquired, or retained pursuant to the Interstate Banking and
1958 Branching Efficiency Act, outside the home state of the bank or foreign bank.
1959 (24) 'National bank' means a national banking association organized pursuant to 12
1960 U.S.C. Sections 21 through 215c or a federal savings association organized pursuant to
1961 12 U.S.C. Sections 1461-1470.
1962 (25) 'Office of a foreign bank' means a branch, agency, or representative office operated
1963 by a foreign bank.
1964 (26) 'Out-of-state foreign bank' means a foreign bank whose home state is another state.
1965 (27) 'Representative office,' when used in reference to an office of a foreign bank, has
1966 the meaning assigned by 12 U.S.C. Section 3101(15) of the International Banking Act.
1967 (28) 'State' means a state of the United States.
1968 (29) 'State bank' means a Georgia state bank or an out-of-state state bank, including an
1969 out-of-state state savings bank.
1970 (30) 'Subsidiary' has the meaning assigned by 12 U.S.C. Section 1841(d) of the Bank
1971 Holding Company Act.
1972 (31) 'United States' means:
1973 (A) When used in a geographical sense, the several states, the District of Columbia,
1974 Puerto Rico, Guam, American Samoa, the American Virgin Islands, the Trust Territory
1975 of the Pacific Islands, and other territories of the United States; and
1976 (B) When used in a political sense, the federal government of the United States.

1977 7-1-1101.

1978 (a) A foreign bank may not engage in business in this state except to the extent permitted
1979 by this article.

1980 (b) Unless subject to an order to cease and desist under Code Section 7-1-1108, the
1981 following activities of a foreign bank shall not be considered engaging in business in this
1982 state for purposes of subsection (a) of this Code section and, therefore, such subsection
1983 shall not prohibit a foreign bank:

1984 (1) From engaging in business at a licensed federal branch or federal agency in this state
1985 in accordance with federal law;

1986 (2) That does not maintain a branch or agency in this state or conduct business from a
1987 location in this state from making unsecured loans in this state or loans secured by liens
1988 on real or personal property located in this state or enforcing those loans in this state, to
1989 the extent permitted by other law; or

1990 (3) Organized under the laws of a territory of the United States the deposits of which are
1991 insured by the Federal Deposit Insurance Corporation from establishing and operating an
1992 interstate branch in this state in its capacity as a state bank pursuant to Part 20 of Article
1993 2 of this chapter.

1994 (c) A foreign bank may engage in business as expressly authorized by the department.

1995 (d) For purposes of subsection (a) of this Code section, a foreign bank is not considered
1996 to be engaging in business in this state merely because a subsidiary or affiliate engages in
1997 business in this state, including business that a depository institution subsidiary or affiliate
1998 may lawfully conduct in this state as an agent for the foreign bank, to the extent authorized
1999 by the laws of this state.

2000 7-1-1102.

2001 Each Georgia state branch, Georgia state agency, or Georgia state representative office
2002 shall maintain and make available appropriate books, accounts, and records reflecting:

2003 (1) All transactions effected by or on behalf of the office of the foreign bank; and
2004 (2) All other actions taken in this state by employees of the foreign bank located in this
2005 state to effect transactions on behalf of an office of the foreign bank located outside this
2006 state.

2007 7-1-1103.

2008 (a) The department may make examinations of a Georgia state branch, Georgia state
2009 agency, or Georgia state representative office as the department considers necessary to
2010 determine whether the office of the foreign bank is being operated in compliance with the
2011 laws of this state and in accordance with safe and sound banking practices. Such
2012 examinations shall be conducted in the same manner as examinations for financial
2013 institutions pursuant to Code Section 7-1-64.

2014 (b) A foreign bank that maintains a Georgia state branch, Georgia state agency, or Georgia
2015 state representative office shall pay fees for licensing, registration, assessment, and
2016 examination to the department in accordance with this article and rules or regulations
2017 adopted pursuant to this article.

2018 7-1-1104.

2019 (a) A foreign bank operating in this state through a Georgia state branch, Georgia state
2020 agency, or Georgia state representative office shall make written reports to the department
2021 that:

2022 (1) Are in English;

2023 (2) Are submitted at the times and in the form specified by the department;

2024 (3) Are under oath of one of the foreign bank's officers, managers, or agents located at
2025 a branch, agency, or representative office in this state;

2026 (4) Show the amount of the foreign bank's assets and liabilities, expressed in United
2027 States currency;

2028 (5) With respect to a Georgia state branch or Georgia state agency, show the amount of
2029 the branch or agency's assets and liabilities, expressed in United States currency; and

2030 (6) Contain other information that the department requires.

2031 (b) A license or registration of a foreign bank under this article may be revoked, or the
2032 foreign bank may be subject to an order to cease and desist under Code Section 7-1-1108,
2033 if the foreign bank fails to make a report required under subsection (a) of this Code section
2034 or makes a material misrepresentation in such report.

2035 7-1-1105.

2036 A foreign bank that operates a Georgia state branch, Georgia state agency, or Georgia state
2037 representative office shall inform the department in writing of the direct or indirect
2038 acquisition of control of the foreign bank by any person or entity, or group of persons or
2039 entities acting in concert, within 14 calendar days after such change in control. Such
2040 foreign bank shall provide to the department any additional information the department
2041 may require in connection with such change in control.

2042 7-1-1106.

2043 (a) Except as otherwise provided by the International Banking Act, other applicable
2044 federal laws or regulations, other applicable state laws or regulations, or otherwise
2045 determined by the department, the operations of a foreign bank at a Georgia state branch,
2046 a Georgia state agency, or a Georgia state representative office shall be conducted with the
2047 same rights and privileges and subject to the same duties, restrictions, penalties, liabilities,
2048 conditions, and limitations that would apply if the Georgia state branch, Georgia state
2049 agency, or Georgia state representative office were operated by a Georgia state bank
2050 operating at the same location.

2051 (b) Notwithstanding subsection (a) of this Code section, a Georgia state branch, Georgia
2052 state agency, or Georgia state representative office shall not have greater rights than
2053 afforded a Georgia state bank under applicable state and federal laws.

2054 7-1-1107.

2055 (a) For purposes of this Code section, offices of foreign banks in this state shall be divided
2056 into classes and ranked in descending order as a:

2057 (1) Georgia state branch;

2058 (2) Georgia state agency; and

2059 (3) Georgia state representative office.

2060 (b) A foreign bank may change a lower class office into a higher class office by applying
2061 for the higher class office pursuant to Code Section 7-1-1111. On approval of the
2062 application to establish the higher class office and after all conditions to the approval have
2063 been satisfied, the foreign bank may change the lower class office into the higher class
2064 office, and the department shall issue a license authorizing the bank to maintain the higher
2065 class office. Upon issuance of the license for the higher class office, the license or
2066 registration previously issued by the department in connection with the lower class office
2067 shall be deemed surrendered and rescinded.

2068 (c) A foreign bank may change a higher class office into a lower class office by applying
2069 for approval to close the higher class office pursuant to Code Section 7-1-1125. On
2070 approval of the application to close the higher class office and after conditions precedent
2071 to the closing have been satisfied, the foreign bank may change the higher class office into
2072 the lower class office, and the department shall issue a license or registration authorizing
2073 the bank to maintain the lower class office. Upon issuance of the license or registration for
2074 the lower class office, the license or registration previously issued by the department in
2075 connection with the higher class office shall be deemed surrendered and rescinded.

2076 7-1-1108.

2077 (a) The department may issue an order requiring a foreign bank to cease and desist
2078 immediately from unauthorized activities whenever it shall appear to the department that:

2079 (1) A foreign bank is operating outside the scope of the authority granted by its license
2080 or registration;

2081 (2) The foreign bank is operating in an unsafe or unsound manner;

2082 (3) The foreign bank has violated any law of this state or any order or regulation of the
2083 department; or

2084 (4) The foreign bank is directly or indirectly engaged in activities in violation of any law
2085 of this state or any order or regulation of the department.

2086 Such cease and desist order shall be final 20 days after it is issued unless the foreign bank
2087 to whom it is issued makes a written request within such 20 day period for a hearing.

2088 (b) Such cease and desist order shall be in writing, sent via email to the foreign bank at the
2089 email address provided to the department by such foreign bank for receipt of notifications
2090 and as is on record with the department. Any cease and desist order sent to a foreign bank
2091 at its email address that is returned to the department as 'undeliverable' or to a foreign bank
2092 that has not provided an email address to the department shall be served by the department
2093 under any other method of lawful service.

2094 (c) Any hearing authorized under subsection (a) of this Code section shall be conducted
2095 in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

2096 (d) If a foreign bank shall fail to comply with the terms of a final order or decision of the
2097 department issued pursuant to this article, the department may, through the Attorney
2098 General and upon notice of three days to such foreign bank, petition the court of the county
2099 in which the foreign bank has conducted operations for an order directing such foreign
2100 bank to obey the order of the department within the period of time as shall be fixed by the
2101 court. Upon the filing of such petition, the court shall allow a motion to show cause why
2102 it should not be granted. After a hearing upon the merits or after failure of such foreign

2103 bank to appear when ordered, the court shall grant the petition of the department upon a
2104 finding that the order of the department was properly issued.

2105 (e) Any foreign bank that violates the terms of any final order or decision issued pursuant
2106 to this article shall be liable for a civil penalty not to exceed \$10,000.00. Each day the
2107 violation continues shall constitute a separate offense. In determining the amount of
2108 penalty, the department shall take into account the appropriateness of the penalty relative
2109 to the size of the financial resources of such foreign bank, the good faith efforts of such
2110 foreign bank to comply with the order, the gravity of the violation, the history of previous
2111 violations by such foreign bank, and such other factors or circumstances that contributed
2112 to the violation. The department may at its discretion compromise or modify any penalty
2113 which is subject to imposition or has been imposed pursuant to this Code section. Any
2114 foreign bank assessed as provided in this subsection shall have the right to request a
2115 hearing into the matter within ten days after notification of the assessment has been served
2116 upon the licensee involved; otherwise, such penalty shall be final except as to judicial
2117 review as provided in Code Section 7-1-90.

2118 (f) Judicial review of any final order or decision of the department entered pursuant to this
2119 article shall be available solely in the Superior Court of DeKalb County, where the
2120 department's main office is located.

2121 (g) In addition to any other administrative penalties authorized by this article, the
2122 department may, by rule or regulation, prescribe administrative fines for violations of this
2123 article and any rules and regulations promulgated by the department pursuant to this article.

2124 7-1-1109.

2125 Without limiting the power conferred by this title, the department may make reasonable
2126 rules and regulations, not inconsistent with law, for the interpretation and enforcement of
2127 this article, including, but not limited to, prescribing administrative fines for violations of
2128 this article and of any rules promulgated by the department pursuant to this article.

2129 7-1-1110.

2130 Except as provided in Code Sections 7-1-1109, 7-1-1112, 7-1-1127, and 7-1-1135, a
2131 foreign bank operating in this state at a branch, agency, or representative office shall be
2132 subject to service of process at such location.

2133 Part 2

2134 7-1-1111.

2135 (a) A foreign bank that desires to establish and maintain a Georgia state branch or Georgia
2136 state agency shall submit an application to the department. Such application shall:

2137 (1) Be accompanied by all application fees and commitments for the pledge of assets
2138 required by this article and applicable rules and regulations;

2139 (2) Be in the form specified by the department;

2140 (3) Be signed and acknowledged by an officer of the foreign bank;

2141 (4) Have attached a complete copy of the foreign bank's notice or application to the
2142 Board of Governors of the Federal Reserve System under 12 U.S.C. Section 3105(d) of
2143 the International Banking Act for the same Georgia state branch or Georgia state agency
2144 location and, when issued, the order from the Board of Governors approving the
2145 application or acknowledging its nonobjection;

2146 (5) Be submitted simultaneously with the federal notice or application to the Board of
2147 Governors of the Federal Reserve System; and

2148 (6) Include on its face or in accompanying documents:

2149 (A) The name of the foreign bank;

2150 (B) The street and mailing address where the principal office of the Georgia state
2151 branch or Georgia state agency is to be located, and the name of the person who shall
2152 be in charge of the business and affairs of the Georgia state branch or Georgia state
2153 agency;

- 2154 (C) The location of its initial registered office in this state;
2155 (D) The managerial resources of the foreign bank, including the competence,
2156 experience, and integrity of the officers and directors, the integrity of its principal
2157 shareholders, and management's experience and capacity to engage in international
2158 banking;
2159 (E) The competence, experience, and integrity of the natural person who shall be in
2160 charge of the business and affairs of the Georgia state branch or Georgia state agency;
2161 (F) A detailed, audited statement of the foreign bank's financial condition as of a date
2162 not more than 360 days before the date of the application;
2163 (G) An email address at which the foreign bank can receive official communications,
2164 including, but not limited to, administrative orders; and
2165 (H) Other information that is requested by the department.
2166 (b) The department may adopt rules and regulations prescribing abbreviated application
2167 procedures and standards applicable to applications by foreign banks to establish additional
2168 Georgia state branches or Georgia state agencies that have already established an initial
2169 Georgia state branch or Georgia state agency.
- 2170 7-1-1112.
2171 (a) After the application is complete and accepted for filing and all required fees and
2172 deposits have been paid, the department shall determine from the application and initial
2173 investigation whether the conditions set forth by Code Section 7-1-1113 have been
2174 established. The department shall approve the application or give the applicant notice of
2175 the department's intention to deny the application pursuant to subsection (c) of this Code
2176 section.
2177 (b) If the department intends to deny the application, the department shall notify the Board
2178 of Governors of the Federal Reserve System that a notice of intent to deny has been issued
2179 and the applicant has a right to request a hearing and, if a hearing is requested, the

2180 commissioner shall conduct the hearing in accordance with Chapter 13 of Title 50, the
2181 'Georgia Administrative Procedure Act.'

2182 (c) Notice of the department's intention to enter an order denying an application for a
2183 license shall be given to the applicant in writing, sent by email to the email address
2184 provided on the application or registered or certified mail or statutory overnight delivery
2185 addressed to the mailing address provided on the application. Within 20 days of the date
2186 of the notice of intention to enter an order of denial under this article, the applicant may
2187 request in writing a hearing to contest the order. If a hearing is not requested in writing
2188 within 20 days of the date of such notice of intention, the department shall enter a final
2189 order regarding the denial. Any final order of the department denying an application shall
2190 state the grounds upon which it is based and shall be effective on the date of issuance. The
2191 department shall promptly send a copy of such order by email to the foreign bank.

2192 (d) Information relating to the financial condition and business affairs of the foreign bank
2193 and financial information relating to its management and shareholders, except for
2194 previously published statements and information, is confidential and may not be considered
2195 in the public portion of the hearing or disclosed by the commissioner or the department
2196 except as provided by Code Section 7-1-70.

2197 (e) The commissioner shall make a finding from the record of the hearing on each
2198 condition listed in Code Section 7-1-1113 and enter an order granting or denying the
2199 license. If the license is denied, the commissioner shall inform the Board of Governors of
2200 the Federal Reserve System of the order and the reasons the federal application should be
2201 denied.

2202 (f) The commissioner may include conditions in the approval of any license application.
2203 The commissioner may not issue a license until the Georgia state branch or Georgia state
2204 agency has received the approval of the Board of Governors of the Federal Reserve
2205 System. If the approval is conditioned on a written commitment from the applicant offered
2206 to and accepted by the commissioner, the commitment is enforceable against the applicant.

2207 (g) A final decision by the department denying an application for license shall be subject
2208 to review in accordance with Code Section 50-13-19.

2209 7-1-1113.

2210 (a) The department shall not issue a license to a foreign bank to establish and maintain a
2211 Georgia state branch or Georgia state agency unless the department determines that:

2212 (1) The foreign bank engages directly in the business of banking outside of the United
2213 States and the Board of Governors of the Federal Reserve System has concluded the
2214 foreign bank is subject to comprehensive supervision or regulation on a consolidated
2215 basis by the appropriate authorities in its home country or determined that comprehensive
2216 supervision or regulation is not required but the foreign bank's application is otherwise
2217 subject to approval;

2218 (2) The foreign bank has furnished to the department the information it needs to act on
2219 the application;

2220 (3) The appropriate authorities in the home country of the foreign bank have consented
2221 to the proposed establishment of a branch or agency in the United States by the foreign
2222 bank;

2223 (4) The managerial resources of the foreign bank, including the foreign bank's experience
2224 and capacity to engage in international banking, are sufficient to enable the Georgia state
2225 branch or Georgia state agency to operate in accordance with safe and sound banking
2226 practices;

2227 (5) The foreign bank has provided the department with adequate assurances that the bank
2228 will make available to the department such information on the operations or activities of
2229 the foreign bank and any affiliate of the bank that the department deems necessary to
2230 determine and enforce compliance with state law, the International Banking Act, and
2231 other applicable federal law;

2232 (6) The foreign bank is in compliance with applicable federal and state law;

2233 (7) The financial resources of the foreign bank, including the foreign bank's capital
2234 position, projected capital position, profitability, level of indebtedness, and future
2235 prospects, are sufficient to enable the Georgia state branch or Georgia state agency to
2236 operate in accordance with safe and sound banking practices;

2237 (8) The directors, executive officers, and principal shareholders of the foreign bank are
2238 qualified by reason of their financial ability, reputation, and integrity and have sufficient
2239 banking and other business experience to indicate that they will manage and direct the
2240 affairs of the foreign bank in accordance with safe and sound banking practices;

2241 (9) The natural person who shall be in charge of the business and affairs of the Georgia
2242 state branch or Georgia state agency is of sufficient banking experience, ability, standing,
2243 competence, trustworthiness, and integrity to justify a belief that the Georgia state branch
2244 or Georgia state agency will operate in compliance with state law, the International
2245 Banking Act, and other applicable federal law;

2246 (10) Federal law permits the appropriate bank supervisory agency to issue a comparable
2247 license to the foreign bank;

2248 (11) The foreign bank has sufficient standing to justify a belief that the Georgia state
2249 branch or Georgia state agency will be free from improper or unlawful influence or
2250 interference with respect to the operation of the Georgia state branch or Georgia state
2251 agency in compliance with state law; and

2252 (12) The foreign bank is acting in good faith and the application does not contain a
2253 material misrepresentation.

2254 (b) A license issued under this article is not transferable or assignable.

2255 7-1-1114.

2256 (a) After the department has issued a license permitting a foreign bank to establish and
2257 maintain a Georgia state branch or Georgia state agency, the foreign bank shall obtain a
2258 certificate of authority from the Secretary of State pursuant to Code Section 14-2-1501.

2259 The foreign bank shall provide the certificate of authority to the department prior to
2260 commencing operations of a Georgia state branch or Georgia state agency.

2261 (b) A foreign bank shall notify the department within three business days if its certificate
2262 of authority is revoked by the Secretary of State.

2263 (c) Notwithstanding the definition of the term 'foreign corporation' in paragraph (13) of
2264 Code Section 14-2-140, all of the provisions of Article 15 of Chapter 2 of Title 14, relating
2265 to foreign corporations, shall apply to all foreign banks establishing and maintaining a
2266 Georgia state branch or Georgia state agency in this state.

2267 7-1-1115.

2268 (a) A foreign bank licensed under this article to establish and maintain a Georgia state
2269 branch or Georgia state agency shall not concurrently maintain a federal branch or federal
2270 agency in this state.

2271 (b) A foreign bank which maintains a federal branch or federal agency in this state shall
2272 not concurrently be licensed under this article to maintain a Georgia state branch or
2273 Georgia state agency.

2274 7-1-1116.

2275 (a) A Georgia state branch or Georgia state agency is subject to this article and other laws
2276 of this state applicable to banks as if the Georgia state branch or Georgia state agency were
2277 a Georgia state bank unless:

2278 (1) This chapter, a rule or regulation of the department, or federal law provides
2279 otherwise; or

2280 (2) The context of a provision or other information indicates that such provision shall
2281 apply only to a bank organized under the laws of a state or the United States.

2282 (b) Among other exceptions to subsection (a) of this Code section that may be required or
2283 authorized by the department, provided by this article, or by adopted rules or regulations:

- 2284 (1) A Georgia state branch may only accept deposits subject to the limitations and
2285 requirements established by applicable federal law, including, but not limited to, 12
2286 U.S.C. Section 3104 and 12 C.F.R. 28.16;
- 2287 (2) A Georgia state agency may not accept deposits; and
- 2288 (3) A limitation or restriction based on the capital and surplus of a Georgia state bank is
2289 considered to refer, as applied to a Georgia state branch or Georgia state agency, to the
2290 dollar equivalent of the capital and surplus of the foreign bank.
- 2291 (c) Subject to subsections (a) and (b) of this Code section, a foreign bank licensed to
2292 transact business in this state through a Georgia state branch or Georgia state agency may:
- 2293 (1) Borrow and lend money with or without property as security;
- 2294 (2) Purchase, sell, and make loans regardless of whether the loans are secured by bond
2295 or mortgages on real property;
- 2296 (3) Engage in foreign exchange transactions;
- 2297 (4) Issue, advise, confirm, and otherwise deal with a letter of credit and pay, accept, or
2298 negotiate a draft drawn under a letter of credit;
- 2299 (5) Accept a bill of exchange or draft;
- 2300 (6) Buy or acquire and sell or dispose of a bill of exchange, draft, note, acceptance, or
2301 other obligation for the payment of money;
- 2302 (7) Maintain a credit balance of money received at the Georgia state branch or Georgia
2303 state agency incidental to or arising out of the exercise of its authorized activities in this
2304 state, provided that the money is not intended to be a deposit and does not remain in the
2305 Georgia state branch or Georgia state agency after the completion of all transactions to
2306 which it relates;
- 2307 (8) Accept deposits to the extent permitted by subsection (b) of this Code section;
- 2308 (9) Receive money for transmission and transmit the money from its authorized place of
2309 business in this state to any other place without the need for a license under Article 4 of
2310 this chapter;

- 2311 (10) Act as an indenture trustee or as a registrar, paying agent, or transfer agent, on
2312 behalf of the issuer, for equity or investment securities;
- 2313 (11) Subject to the prior approval of the department in accordance with Code Section
2314 7-1-1117, act as a fiduciary; and
- 2315 (12) Perform other activities that:
- 2316 (A) Are authorized by the rules and regulations adopted to accomplish the purposes of
2317 this article;
- 2318 (B) Are authorized for federal branches of foreign banks, subject to compliance with
2319 any related federal conditions or limitations and subject to the notice and objection
2320 procedures set forth in Code Section 7-1-296; or
- 2321 (C) The department determines are analogous or incidental to specific activities
2322 authorized by this Code section for a Georgia state branch or Georgia state agency.
- 2323 (d) A foreign bank licensed to transact business in this state through a Georgia state branch
2324 or Georgia state agency may share the premises of the Georgia state branch or Georgia
2325 state agency with another authorized office of the foreign bank or direct or indirect
2326 subsidiary of the foreign bank, provided that the books or records of the Georgia state
2327 branch or Georgia state agency are maintained separately from the books and records of
2328 the other office of the foreign bank.
- 2329 7-1-1117.
- 2330 (a) Except as provided in paragraph (10) of subsection (c) of Code Section 7-1-1116, a
2331 foreign bank may not act as a fiduciary at a Georgia state branch or Georgia state agency
2332 except by obtaining approval from the department as provided in this Code section. No
2333 Georgia state branch or Georgia state agency shall exercise the powers and privileges of
2334 a fiduciary without submitting an application to do so in a manner and form prescribed by
2335 the department. At a minimum, the application shall describe in detail:
- 2336 (1) The proposed fiduciary activities;

2337 (2) The names and relevant expertise of its officers and employees who will conduct the
2338 fiduciary activities; and

2339 (3) The manner in which the fiduciary activities will be captured in the books and
2340 records of the Georgia state branch or Georgia state agency with due regard for separation
2341 of beneficial and legal interests.

2342 The department shall evaluate the application in the same manner as for a license as
2343 provided in Code Section 7-1-1113.

2344 (b) The department may approve a foreign bank applicant to engage in fiduciary activities
2345 if the commissioner finds that the foreign bank will exercise its fiduciary powers in
2346 accordance with the laws of this state and has sufficient fiduciary and accounting expertise
2347 and controls to protect beneficial interests under its control. The department may include
2348 conditions and limitations in any approval of fiduciary powers. If the approval is
2349 conditioned on a written commitment from the applicant offered to and accepted by the
2350 commissioner, the commitment is enforceable against the applicant. If the department, in
2351 its discretion, disapproves the proposed use of fiduciary powers, it shall notify the foreign
2352 bank of its disapproval and state generally the unfavorable factors influencing its decision.
2353 The decision of the department shall be conclusive, except that it may be subject to judicial
2354 review as provided in Code Section 7-1-90.

2355 (c) Notwithstanding the limitations in Article 15 of Chapter 12 of Title 53, a foreign bank
2356 that obtains the approval of the department under this Code section may engage in
2357 fiduciary activities at its Georgia state branch or Georgia state agency to the same extent
2358 and in the same manner as a Georgia state bank could do so at the same location, subject
2359 to any conditions or limitations applicable to the approval.

2360 (d) The department may initiate an enforcement action or may order a foreign bank to
2361 cease engaging in fiduciary activities in this state in the same manner as a cease and desist
2362 order under Code Section 7-1-1108 if the department finds in writing that:

2363 (1) Conditions exist related to the fiduciary activities of the foreign bank in this state
2364 which would authorize the department to revoke its license pursuant to Code Section
2365 7-1-1126; or

2366 (2) A fact or condition exists which, if it had existed at the time of the foreign bank's
2367 original application to engage in fiduciary activities, would have resulted in the
2368 department disapproving the foreign bank to engage in fiduciary activities.

2369 7-1-1118.

2370 (a) A foreign bank licensed to establish and maintain a Georgia state branch or Georgia
2371 state agency shall apply to the department for an amended license if it changes its corporate
2372 name, changes the duration of its corporate existence, or desires to pursue in this state other
2373 or additional purposes than those set forth in its prior application for the foreign bank's
2374 license then in effect.

2375 (b) The requirements with respect to the form and contents of an application under
2376 subsection (a) of this Code section, the manner of its execution, the issuance of an amended
2377 license, and the effect of the amended license shall be the same as in the case of an initial
2378 application for a license to establish and maintain a Georgia state branch or Georgia state
2379 agency.

2380 7-1-1119.

2381 (a) For purposes of this Code section, the term 'relocation' means the location of an
2382 existing Georgia state branch or Georgia state agency is to be moved to a new location
2383 which is to be constructed, purchased, or leased within the State of Georgia.

2384 (b) A foreign bank may submit a letter form application to the department to relocate an
2385 existing Georgia state branch or Georgia state agency. Unless the department denies the
2386 application, the approval to relocate an existing Georgia state branch or Georgia state
2387 agency under this Code section shall be effective at the earlier of:

2388 (1) The date of an approval letter from the department; or
2389 (2) Ten business days following the date of the department's acknowledged receipt of the
2390 application.

2391 (c) At least 30 days before the relocation, a foreign bank shall post a notice to consumers
2392 of such proposed relocation in a conspicuous location at the affected Georgia state branch
2393 or Georgia state agency and on its website.

2394 7-1-1120.

2395 Each foreign bank licensed to establish and maintain a Georgia state branch or Georgia
2396 state agency in this state shall keep the assets of its business in this state separate and apart
2397 from the assets of its business outside this state.

2398 7-1-1121.

2399 Each foreign bank licensed to establish and maintain a Georgia state branch or Georgia
2400 state agency shall give clear and conspicuous notice consistent with 12 C.F.R. 347.207 that
2401 deposits and credit balances in the Georgia state branch or Georgia state agency are not
2402 insured by the Federal Deposit Insurance Corporation.

2403 7-1-1122.

2404 A foreign bank with an out-of-state branch or agency may, with the approval of the
2405 department, establish:

2406 (1) A Georgia state branch or Georgia state agency;

2407 (2) Acquire or merge with another foreign bank maintaining a Georgia state branch or
2408 Georgia state agency and after the acquisition or merger continue the operations as its
2409 own; or

2410 (3) Acquire or establish a Georgia state branch or Georgia state agency through another
2411 means not inconsistent with 12 U.S.C. Section 3102 of the International Banking Act.

2412 7-1-1123.

2413 (a) A foreign bank licensed to establish and maintain a Georgia state branch or Georgia
2414 state agency shall be required to keep dollar deposits or investment securities, with
2415 unaffiliated banks in this state that the foreign bank designates and the department
2416 approves, or money and securities pledged to the department in an aggregate amount to be
2417 determined by the department, valued at the lower of principal amount or market value,
2418 consisting of:

2419 (1) United States dollar deposits;

2420 (2) Bonds, notes, debentures, or other legally created, general obligations of a state, an
2421 agency or political subdivision of a state, the United States, or an instrumentality of the
2422 United States;

2423 (3) Securities that this state, an agency or political subdivision of this state, the United
2424 States, or an instrumentality of the United States has unconditionally agreed to purchase,
2425 insure, or guarantee;

2426 (4) Certificates of deposit, payable in the United States, and banker's acceptances,
2427 provided that, in either case, the issuer has an adequate capacity to meet financial
2428 commitments, meaning the risk of default by the obligor is low and the full and timely
2429 repayment of principal and interest is expected, for the projected life of the asset or
2430 exposure expected;

2431 (5) Repurchase agreements; or

2432 (6) Other assets as may be permitted by rule.

2433 (b) The aggregate amount of deposited investment securities and dollar deposits for each
2434 Georgia state branch or Georgia state agency established and operating under this Code
2435 section shall be not less than the greater of:

2436 (1) That amount of capital which would be required of a Georgia state bank under Code
2437 Section 7-1-410; or

2438 (2) One percent of the total liabilities of such Georgia state branch or Georgia state
2439 agency, including acceptances, but excluding accrued expenses and amounts due and
2440 other liabilities to offices, branches, agencies, and subsidiaries of such foreign bank.

2441 Notwithstanding the above deposit requirement, the department is authorized to enact rules
2442 and regulations pursuant to this article to establish a maximum dollar amount of deposited
2443 investment securities and dollar deposits for certain highly rated foreign banks. For
2444 prudential or supervisory reasons, the department may require that a foreign bank have
2445 deposited investment securities and dollar deposits above the minimum amount.

2446 (c) The assets deposited and the amount of the assets to be maintained under subsection
2447 (a) of this Code section are subject to the conditions and limitations the department
2448 considers necessary or desirable for the maintenance of a sound financial condition; the
2449 protection of depositors, creditors, and the public interest in this state; and the support of
2450 public confidence in the business of the Georgia state branch or Georgia state agency.

2451 (d) A foreign bank shall require its depository bank to segregate its dollar deposits and
2452 deposited investment securities on the depository bank's books and records. The funds
2453 deposited and obligations referred to in subsection (a) of this Code section that are placed
2454 in safekeeping at a depository bank:

2455 (1) Shall not be reduced in value below the minimum required for that Georgia state
2456 branch or Georgia state agency without the prior approval of the department, but in no
2457 event below the minimum amount required under Code Section 7-1-410;

2458 (2) Shall be maintained pursuant to an agreement prescribed by the department that shall
2459 be a written agreement entered into with the department; and

2460 (3) Shall be free from any lien, charge, right of setoff, credit, or preference in connection
2461 with any claim of the depository bank against the foreign bank.

2462 (e) Each Georgia state branch or Georgia state agency shall file with the department such
2463 reports as required by rule or regulation to determine compliance with this Code section.

2464 7-1-1124.

2465 (a) The department may require a foreign bank to hold certain assets in this state.

2466 (b) If the department requires asset maintenance, the amount of assets held by a foreign
2467 bank shall be prescribed by the department after consideration of the aggregate amount of
2468 liabilities of the Georgia state branch or Georgia state agency, payable at or through the
2469 Georgia state branch or Georgia state agency. To determine the aggregate amount of
2470 liabilities for purposes of this subsection, the foreign bank shall include bankers'
2471 acceptances, but exclude liabilities to the head office and any other branches, offices,
2472 agencies, subsidiaries, and affiliates of the foreign bank.

2473 (c) In determining compliance with the asset maintenance requirements, the department
2474 shall give the Georgia state branch or Georgia state agency credit for:

2475 (1) Assets pledged pursuant to Code Section 7-1-1123; and

2476 (2) Reserves required to be maintained by the Georgia state branch or Georgia state
2477 agency pursuant to 12 U.S.C. Section 3105(a).

2478 (d) In determining eligible assets for purposes of this Code section, the Georgia state
2479 branch or Georgia state agency shall exclude:

2480 (1) Any amount due from the head office or any other branch, office, agency, subsidiary,
2481 or affiliate of the foreign bank;

2482 (2) Any classified asset;

2483 (3) Any asset that, in the determination of the department, is not supported by sufficient
2484 credit information;

2485 (4) Any deposit with a bank in the United States, unless that bank has executed a valid
2486 waiver of offset agreement;

2487 (5) Any asset not in the actual possession of the Georgia state branch or Georgia state
2488 agency, unless the branch or agency holds title to the asset and maintains records
2489 sufficient to enable independent verification of the ownership of the asset by the branch
2490 or agency, as determined at the most recent examination; and

2491 (6) Any other particular asset or class of assets as provided by the department, based on
2492 a case-by-case assessment of the risks associated with the asset.

2493 (e) In the event the department requires asset maintenance, assets to be held in this state
2494 for the purpose of satisfying the ratio of assets to liabilities shall:

2495 (1) Include:

2496 (A) Currency, bonds, notes, debentures, drafts, bills of exchange, or other evidences
2497 of indebtedness, including loan participation agreements or certificates;

2498 (B) Other obligations payable in the United States or in United States funds or, with
2499 the prior approval of the department, in funds freely convertible into United States
2500 funds; and

2501 (C) Other assets as may be specified by rule or regulation; and

2502 (2) Exclude obligations of a person for money borrowed to the extent that the total of the
2503 obligations of the person exceeds 10 percent of total assets considered for purposes of this
2504 Code section.

2505 (f) For purposes of this Code section, assets shall be valued at the lower of principal
2506 amount or market value. The department may determine the value of a nonmarketable
2507 security, loan, or other asset or obligation held or owed to the foreign bank or its Georgia
2508 state branch or Georgia state agency in this state. If the department cannot determine the
2509 value of a nonmarketable asset, such asset shall be excluded from the ratio computation.

2510 (g) The department may require a foreign bank to deposit the assets required to be held in
2511 this state pursuant to this Code section with specific banks in this state designated by the
2512 department if, because of the existence or the potential occurrence of unusual and
2513 extraordinary circumstances, the department considers it necessary or desirable for the
2514 maintenance of a sound financial condition; the protection of depositors, creditors, and the
2515 public interest in this state; and the maintenance of public confidence in the business of a
2516 Georgia state branch or Georgia state agency.

2517 7-1-1125.

2518 (a) A foreign bank licensed to establish and maintain a Georgia state branch or Georgia
2519 state agency may not close the Georgia state branch or Georgia state agency without filing
2520 an application with, and obtaining the prior approval of, the department. An application
2521 by a foreign bank under this Code section shall be in such form and include such
2522 information as the department requires.

2523 (b) The commissioner shall approve such application if the department finds that the
2524 closing of the Georgia state branch or Georgia state agency will not be substantially
2525 detrimental to the foreign bank's depositors and creditors in this state. An application may
2526 be approved subject to conditions imposed by the department for the continued protection
2527 of the foreign bank's depositors and creditors in this state, including a condition that the
2528 foreign bank pledge assets in the manner specified by Code Section 7-1-1123 or maintain
2529 assets as contemplated by Code Section 7-1-1124 for a specified period of time.

2530 (c) When an application by a foreign bank under this Code section has been approved and
2531 all conditions precedent to the closing have been fulfilled, the foreign bank shall deliver
2532 to the department:

2533 (1) All existing copies of examination reports or other property of the department;

2534 (2) A statement under oath by an authorized officer, manager, or agent of the foreign
2535 bank that all deposit and other liabilities of the Georgia state branch or Georgia state
2536 agency to depositors and creditors in this state have been properly discharged by payment
2537 or pledge or otherwise assumed or retained by a financial institution;

2538 (3) An appropriate board resolution closing the Georgia state branch or Georgia state
2539 agency; and

2540 (4) A statement of the location where the Georgia state branch or Georgia state agency
2541 records will be kept after the closing.

2542 Upon receipt of adequate documentation, the department shall provide written
2543 authorization that the foreign bank may close the Georgia state branch or Georgia state
2544 agency.

2545 7-1-1126.

2546 The department may revoke the license of a Georgia state branch or Georgia state agency
2547 if the department by examination or other credible evidence finds that the foreign bank:

2548 (1) Does not currently meet the criteria established by this article for the original
2549 issuance of a license;

2550 (2) Has refused to permit the department to examine its books, papers, accounts, records,
2551 or affairs in accordance with Code Sections 7-1-1102 and 7-1-1103;

2552 (3) Has failed to make a report required under this article or made a material false or
2553 misleading statement in such report;

2554 (4) Has violated this article, another law or rule applicable to a foreign bank or a Georgia
2555 state branch or Georgia state agency, or a final and enforceable order of the department;

2556 (5) Has misrepresented or concealed a material fact in the application for licensure;

2557 (6) Has violated a condition of its license or an agreement between the foreign bank and
2558 the department or other functional regulatory agency;

2559 (7) Has had its authorization to act dissolved, revoked, or otherwise terminated in its
2560 jurisdiction of incorporation or jurisdiction where it is operating a branch, agency, or
2561 representative office;

2562 (8) One or more grounds for receivership, including insolvency, as specified in Code
2563 Section 7-1-1129, exists; or

2564 (9) Conducts business in an unsafe and unsound manner.

2565

2566 7-1-1127.

2567 (a) Notice of the department's intention to enter an order revoking a license of a Georgia
2568 state branch or Georgia state agency shall be given to the foreign bank in writing, sent via
2569 email to the foreign bank at the email address provided to the department by such foreign
2570 bank for receipt of notifications. Within 20 days of the date of issuance of the notice of
2571 intention to enter an order of revocation under this article, the foreign bank may request in
2572 writing a hearing to contest the order. If a hearing is not requested in writing within 20
2573 days of the date of issuance of such notice of intention, the department shall enter a final
2574 order regarding the revocation. A final order of the department revoking a license shall
2575 state the grounds upon which it is based and shall be effective on the date of issuance. The
2576 department shall promptly send a copy of such order by email to the foreign bank at the
2577 email address provided to the department by such foreign bank.

2578 (b) A foreign bank may not accept new business during the pendency of a hearing
2579 requested pursuant to subsection (a) of this Code section unless the commissioner gives
2580 prior written approval, except that such foreign bank shall comply with any stricter
2581 requirements imposed by 12 U.S.C. Section 3105(e) of the International Banking Act.

2582 (c) Information relating to the financial condition and business affairs of the foreign bank,
2583 except previously published statements and information, is confidential and shall not be
2584 disclosed by the commissioner or an employee of the department except as provided by
2585 Code Section 7-1-70.

2586 (d) A decision by the department denying an application for license or of an order
2587 revoking a license shall be subject to review in accordance with Code Section 50-13-19.

2588

2589 7-1-1128.

2590 Unless stayed by the superior court that has jurisdiction over an appeal under Code Section
2591 50-13-19, a final order of the commissioner revoking a license is effective immediately,
2592 and the foreign bank shall immediately cease all activity in this state requiring a license.

2593 7-1-1129.

2594 (a) If the department finds that any of the factors set forth in Code Section 7-1-150 or
2595 7-1-1126 are true with respect to a foreign bank licensed to establish and maintain a
2596 Georgia state branch or Georgia state agency, the department may by order of the
2597 commissioner immediately take possession of the property and business of the foreign bank
2598 in this state if that action is necessary or desirable for the protection of the interests of the
2599 depositors and creditors of the foreign bank's business in this state or for the protection of
2600 the public. The department shall retain possession until the foreign bank resumes business
2601 in this state or is finally liquidated, except that the department may permit the foreign bank
2602 to resume business in this state on such conditions as the department requires. An order
2603 issued under this Code section shall be served on the foreign bank in the manner required
2604 by subsection (a) of Code Section 7-1-1127.

2605 (b) As soon as practicable after taking possession of the property and business of a foreign
2606 bank pursuant to subsection (a) of this Code section, the department shall initiate a
2607 receivership proceeding by filing a copy of the order issued under this Code section in the
2608 Superior Court of DeKalb County to be governed by Part 7 of Article 1 of this chapter as
2609 if the foreign bank were a Georgia state bank, except as otherwise provided by this Code
2610 section. Notwithstanding the priorities established by Part 7 of Article 1 of this chapter, the
2611 depositors and creditors of the Georgia state branch or Georgia state agency arising out of
2612 transactions with and recorded on the books of the Georgia state branch or Georgia state
2613 agency have an absolute preference and priority over the creditors of the foreign bank's
2614 offices located outside this state.

2615 (c) An action initiated that seeks to directly or indirectly affect the assets of the Georgia
2616 state branch or Georgia state agency is considered to be an intervention in the receivership
2617 proceeding. Venue for an action instituted to effect, contest, or otherwise intervene in the
2618 liquidation of a Georgia state branch or Georgia state agency is in DeKalb County.

2619 (d) The foreign bank may contest the department's actions as provided in this subsection.
2620 On or before the tenth day after the date the department has taken possession of the
2621 property and business of a foreign bank pursuant to subsection (a) of this Code section, the
2622 foreign bank, acting through a majority of its directors, may intervene in the action filed
2623 by the commissioner to challenge the department's closing of the foreign bank's Georgia
2624 state branch or Georgia state agency and to enjoin the department or other receiver from
2625 liquidating its assets. The court may issue an injunction restraining the department or other
2626 receiver from liquidating the foreign bank's assets pending a resolution of the merits of the
2627 action. The department or other receiver shall comply with the restraining order but may
2628 petition the court for permission to liquidate assets as necessary to prevent their loss or
2629 diminution pending the outcome of the injunction. The department or other receiver shall
2630 not be required to post bond. The court shall hear such action as quickly as possible and
2631 shall give it priority over other business. The foreign bank or the commissioner or other
2632 receiver may appeal the court's judgment as in other civil cases, except that the
2633 commissioner or other receiver shall retain all seized foreign bank assets pending a final
2634 appellate court order even if the commissioner does not prevail in the superior court. If the
2635 department prevails in the superior court, liquidation of the assets of the Georgia state
2636 branch or Georgia state agency may proceed unless the superior court or appellate court
2637 orders otherwise. If liquidation is enjoined or stayed pending appeal, the superior court
2638 retains jurisdiction to permit liquidation of assets as necessary to prevent their loss or
2639 diminution pending the outcome of the appeal.

2640 (e) After the commissioner or other receiver has completed the liquidation of the property
2641 and business of a foreign bank, the commissioner or other receiver shall transfer any
2642 remaining assets to the foreign bank in accordance with the court's orders, except that:

2643 (1) If the foreign bank has an office in another state of the United States that is in
2644 liquidation and the assets of the office appear to be insufficient to pay in full the creditors
2645 of that office, the court shall order the commissioner or other receiver to transfer to the

2646 liquidator of that office the amount of the remaining assets that appears to be necessary
2647 to cover the insufficiency; or

2648 (2) If the foreign bank has two or more such offices in liquidation and the amount of
2649 remaining assets is less than the aggregate amount of insufficiencies with respect to such
2650 offices, the court shall order the commissioner or other receiver to distribute the
2651 remaining assets among the liquidators of the offices in the manner the court finds
2652 equitable.

2653

2654 7-1-1130.

2655 (a) If a foreign bank licensed to maintain a Georgia state branch or Georgia state agency
2656 in this state is dissolved, has its authority or existence terminated or canceled in the
2657 jurisdiction of its incorporation, or has its authority to maintain a Georgia state branch or
2658 Georgia state agency terminated by the Board of Governors of the Federal Reserve System
2659 under 12 U.S.C. Section 3105(e) of the International Banking Act, an officer, manager, or
2660 agent of the foreign bank shall immediately deliver to the department:

2661 (1) A certified copy of:

2662 (A) A certificate of the official responsible for records of banking corporations of the
2663 foreign bank's jurisdiction of incorporation attesting to the occurrence of dissolution or
2664 of termination or cancellation of its authority or existence;

2665 (B) An order or decree of a court directing the dissolution of the foreign bank or the
2666 termination or cancellation of its authority or existence; or

2667 (C) An order of the Board of Governors of the Federal Reserve System terminating its
2668 authority under 12 U.S.C. Section 3105(e) of the International Banking Act; and

2669 (2) The documents and information required by subsection (c) of Code Section 7-1-1125.

2670 (b) The filing of the certificate, order, or decree has the same effect provided by Code
2671 Section 7-1-1128 as if the license issued under this article were revoked by the department
2672 as of the effective date of termination or cancellation specified in the certificate, order, or

2673 decree unless the department orders an earlier effective date, subject to the procedural
2674 protections of Code Section 7-1-1127.

2675 Part 3

2676 7-1-1131.

2677 (a) A foreign bank may establish a Georgia state representative office upon approval by
2678 the department of an application for registration. Such application shall:

2679 (1) Be accompanied by all registration fees required by rule or regulation;

2680 (2) Be in the form specified by the department;

2681 (3) Be signed and acknowledged by an officer of the foreign bank;

2682 (4) Contain as an exhibit or attachment a copy of the foreign bank's notice or application
2683 submitted to the Board of Governors of the Federal Reserve System under 12 U.S.C.

2684 Section 3107 of the International Banking Act, and, when issued, the order or notification
2685 from the Board of Governors indicating that the representative office has been approved,
2686 if such notice or application is required;

2687 (5) Be submitted when the federal notice or application is submitted to the Board of
2688 Governors of the Federal Reserve System; and

2689 (6) Directly or in exhibits or attachments contain:

2690 (A) The name of the foreign bank;

2691 (B) The street and mailing address where each Georgia state representative office is to
2692 be located in this state and the name of the person who shall be in charge of the
2693 business and affairs of the Georgia state representative office;

2694 (C) The location of its initial registered office in this state;

2695 (D) The managerial resources of the foreign bank, including the competence,
2696 experience, and integrity of the officers and directors; the integrity of its principal

2697 shareholders; and management's experience and capacity to engage in international
2698 banking;

2699 (E) A complete and detailed audited statement of the financial condition of the foreign
2700 bank as of a date not more than 360 days before the date of the filing; and

2701 (F) Other information the department requires.

2702 (b) Each Georgia state representative office shall submit an annual registration with the
2703 department as set forth in the rules and regulations enacted by the department.

2704 (c) The department may adopt rules and regulations prescribing abbreviated registration
2705 procedures and standards for foreign banks that have already established an initial Georgia
2706 state representative office to establish additional Georgia state representative offices.

2707 (d) A foreign bank that maintains a Georgia state branch, a federal branch, a Georgia state
2708 agency, or a federal agency in this state is authorized to establish or maintain one or more
2709 Georgia state representative offices.

2710 7-1-1132.

2711 A Georgia state representative office may engage in the activities authorized by this article
2712 at each location registered with the department as a representative office. A Georgia state
2713 representative office may change its location in this state by filing a letter form application
2714 with the department containing the street address and mailing address of the new location.

2715 Unless the department denies the application, the approval to relocate an existing Georgia
2716 state representative office under this Code section will be effective at the earlier of:

2717 (1) The date of an approval letter from the department; or

2718 (2) Ten business days following the date of the department's acknowledged receipt of the
2719 application.

2720 All relocations should include a notice to customers posted in a conspicuous place of the
2721 affected location as well as on the bank's website at least 30 days before relocating.

2722 7-1-1133.

2723 A registered Georgia state representative office of a foreign bank may engage in:

2724 (1) Representational and administrative functions in connection with the banking
2725 activities of the foreign bank that:

2726 (A) May include soliciting new business for the foreign bank, conducting research,
2727 acting as liaison between the foreign bank's head office and customers in the United
2728 States, performing preliminary and servicing steps in connection with lending, or
2729 performing back-office functions;

2730 (B) May include such other activities as are permitted for representative offices of
2731 foreign banks under 12 C.F.R. 211.24(d); and

2732 (C) May include such other activities as are permitted for representative offices of
2733 foreign banks pursuant to federal law or regulation, subject to compliance with any
2734 related federal conditions or limitations and subject to the notice and objection
2735 procedures set forth in Code Section 7-1-296; but

2736 (D) Do not include contracting for any deposit or deposit-like liability, lending money,
2737 or engaging in any other banking activity for the foreign bank;

2738 (2) Making credit decisions if:

2739 (A) The foreign bank also operates one or more branches or agencies in the United
2740 States;

2741 (B) The loans approved at the representative office are made by a branch or agency of
2742 the foreign bank;

2743 (C) The loan proceeds are not disbursed in the representative offices; and

2744 (D) Authorized for representative offices of foreign banks pursuant to federal law or
2745 regulation, subject to compliance with any related federal conditions or limitations and
2746 subject to the notice and objection procedures set forth in Code Section 7-1-296; and

2747 (3) Other functions for or on behalf of the foreign bank or its affiliates, including
2748 operating as a regional administrative office of the foreign bank, but only to the extent

2749 that the functions are not banking activities and are not prohibited by applicable federal
2750 or state law.

2751 7-1-1134.

2752 The department may deny an application for registration or revoke the registration of a
2753 representative office if the department by examination or other credible evidence finds that
2754 the foreign bank:

2755 (1) Has refused to permit the department to examine the books, papers, accounts,
2756 records, or affairs of a Georgia state representative office in accordance with Code
2757 Sections 7-1-1102 and 7-1-1103;

2758 (2) Has violated this article, another law or rule applicable to the foreign bank or a
2759 Georgia state representative office, or a final and enforceable order of the department;

2760 (3) Has misrepresented or concealed a material fact in the original or subsequent
2761 registration applications;

2762 (4) Has violated a condition of an agreement between the foreign bank and the
2763 department or other functional regulatory agency;

2764 (5) Has had its authority or existence terminated or canceled in its jurisdiction of
2765 incorporation; or

2766 (6) Conducts business in an unsafe and unsound manner.

2767 7-1-1135.

2768 (a) Notice of the department's intention to enter an order revoking a registration or denying
2769 an application for registration shall be given to the foreign bank in writing, sent via email
2770 to the foreign bank at the email address provided to the department by such foreign bank
2771 for receipt of notifications. Within 20 days of the date of issuance of the notice of intention
2772 to enter an order of revocation or denial under this article, the foreign bank may request in
2773 writing a hearing to contest the order. If a hearing is not requested in writing within 20

2774 days of the date of issuance of such notice of intention, the department shall enter a final
2775 order regarding the revocation or denial. Any final order of the department revoking a
2776 registration or denying an application for registration shall state the grounds upon which
2777 it is based and shall be effective on the date of issuance. The department shall promptly
2778 send a copy of such order by email to the foreign bank.

2779 (b) If the Georgia state representative office's registration has been approved and the
2780 department issues a subsequent notice of intent to revoke registration, the foreign bank
2781 shall not accept new business during the pendency of the hearing unless the commissioner
2782 gives prior written approval, except that it shall comply with any stricter requirements
2783 imposed by 12 U.S.C. Section 3105(e) of the International Banking Act.

2784 (c) Information relating to the financial condition and business affairs of the foreign bank,
2785 except previously published statements and information, is confidential and may not be
2786 disclosed by the commissioner or an employee of the department except as provided by
2787 Code Section 7-1-70.

2788 (d) A decision by the department denying an application for registration or of an order
2789 revoking a registration shall be subject to review in accordance with Code Section
2790 50-13-19.

2791 7-1-1136.

2792 A foreign bank that has had its Georgia state representative office registration revoked
2793 under this part shall cease all activities in this state except to the extent authorized by Code
2794 Section 7-1-1101. Continued activity in this state of an unregistered foreign bank is subject
2795 to Code Section 7-1-5.

2796 7-1-1137.

2797 (a) If a foreign bank with a registered Georgia state representative office is dissolved, has
2798 its authority or existence terminated or canceled in the jurisdiction of its incorporation, or

2799 has its authority to maintain its Georgia state representative office terminated by the Board
2800 of Governors of the Federal Reserve System under 12 U.S.C. Section 3107(b) of the
2801 International Banking Act, an officer, manager, or agent of the foreign bank shall deliver
2802 to the department a certified copy of:

2803 (1) A certificate of the official responsible for records of banking corporations of the
2804 foreign bank's jurisdiction of incorporation attesting to the occurrence of dissolution or
2805 of termination or cancellation of authority or existence;

2806 (2) An order or decree of a court directing the dissolution of the foreign bank or the
2807 termination or cancellation of its authority or existence; or

2808 (3) An order of the Board of Governors of the Federal Reserve System terminating its
2809 authority under 12 U.S.C. Section 3107(b) of the International Banking Act.

2810 (b) The filing with the department of such certificate, order, or decree has the same effect
2811 as provided in Code Section 7-1-1136 as if the registration made under this article were
2812 revoked by the department.

2813 7-1-1138.

2814 Every Georgia state representative office registered with the department under the
2815 provisions of Code Section 7-1-721 as of June 30, 2023, shall remain registered and be
2816 allowed to conduct business in Georgia. Such Georgia state representative offices shall
2817 comply with this part and Part 1 of this article."

2818 **SECTION 49.**

2819 All laws and parts of laws in conflict with this Act are repealed.