

House Bill 15

By: Representatives Williamson of the 112th, Williams of the 148th, Douglas of the 78th,
Dickey of the 134th, 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 update terminology; to revise procedures concerning incorporators of credit unions;
3 to revise requirements of articles of incorporation of credit unions; to revise licensure
4 requirements for money transmissions, cashing payment instruments, mortgage lenders and
5 mortgage brokers, foreign banking institutions, and installment loans; to provide for revised
6 auditing procedures for mortgage lenders and mortgage brokers; to provide for corporate
7 governance requirements for mortgage lenders and mortgage brokers; to provide for liquidity
8 requirements for mortgage lenders and mortgage brokers; to revise requirements for
9 applications to relocate for foreign banking institutions; to revise background check
10 procedures for merchant acquirer limited purpose banks; to provide for regulation by the
11 Department of Banking and Finance of installment loans and merchant acquirer limited
12 purpose banks; to revise deposit requirements for merchant acquirer limited purpose banks;
13 to provide for definitions; to revise cross-references; to provide for related matters; to repeal
14 conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is amended in Article 1 of Chapter 1, relating to department of banking and finance and financial institutions generally, by revising Code Section 7-1-235, relating to part inapplicable to bank holding company transactions, as follows:

"7-1-235.

Except for the provisions of Code Sections 7-1-231 and 7-1-232, this This part shall not apply to a transaction subject to Code Sections 7-1-605 through 7-1-608, relating to bank holding companies."

SECTION 2.

Said title is further amended in Article 2 of Chapter 1, relating to banks and trust companies, by revising subsection (c) of Code Section 7-1-392, relating to articles of incorporation, advertisement of articles or notice of application, and naming registered agent, as follows:

"(c) The incorporators shall file with the department the articles, together with the fee required by Code Section 7-1-862. Such filing shall constitute an application for a certificate of incorporation. Immediately upon the filing of the articles, the department shall certify a copy thereof and return it to the applicants, who shall, in conformity with Code Section 7-1-7 and ~~on~~ no later than the next business day following the filing of the articles, transmit for publication a copy of the articles or, in lieu thereof, a statement in substantially the following form:

'An application for a certificate of incorporation of a (bank, trust company, or bank and trust company) to be known as the _____ and to be located at _____ in _____ County, Georgia, will be made to the Secretary of State of Georgia by (names and ~~addresses~~ counties of residence of incorporators) in accordance with Chapter 1 of Title 7 of the Official Code of Georgia Annotated, the "Financial Institutions Code of Georgia." A copy of the articles of

incorporation of such proposed (bank, trust company, or bank and trust company) and the application have been filed with the Department of Banking and Finance. The following persons have been proposed as the initial directors: (names and ~~addresses~~ counties of residence of proposed directors).'

to the newspaper which is the official organ of the county where the main office will be located. The articles or statement must be published once a week for two consecutive weeks with the first publication occurring within ten days of receipt by the newspaper of the articles or statement."

SECTION 3.

Said title is further amended by revising paragraph (2) of subsection (b) of Code Section 7-1-606, relating to prohibited activities of bank holding company or subsidiary and exceptions, as follows:

"(2) In every case, the department shall take into consideration the financial and managerial resources, including the competence, character, and experience of management, and future prospects of the company or companies and the banks concerned."

SECTION 4.

Said title is further amended in Article 3 of Chapter 1, relating to credit unions, by revising Code Section 7-1-630, relating to subscribers, articles, filings, fee, and directors, as follows:

"7-1-630.

(a) Any number of persons, not less than eight, having a common bond, as defined in subsection (b) of this Code section, may incorporate for the purpose of organizing a credit union in accordance with this article. The persons so desiring to become incorporated shall execute articles which shall set forth the following:

(1) The name of the proposed credit union;

- (2) The territory in which it will operate;
- (3) The location where its initial registered office will be located;
- (4) The names and ~~addresses~~ counties of residence of the subscribers, their occupation, length of service, and that each has subscribed to one share and paid for same;
- (5) The names and ~~addresses~~ counties of residence of the original directors;
- (6) The proposed field of membership specified in detail and having the same common bond as the subscribers;
- (7) That the purpose and nature of the business are to conduct a credit union with the rights and powers granted by this article; and
- (8) The term of the existence of the credit union, which shall be perpetual unless otherwise limited.
- (b) For purposes of this article, 'common bond' means that specific relationship of occupation, association, or interest; residence or employment within a well-defined neighborhood, community, or rural district; employees of a common employer; or members of a bona fide cooperative, educational, fraternal, professional, religious, rural, or similar organization which tends to create a mutual interest between persons sharing the relationship. Persons related by blood, adoption, or marriage to or living in the same household with a person within such common bond and the surviving spouses of deceased members shall also be considered within the common bond.
- (c) The subscribers shall file the articles with the department together with the fee specified in Code Section 7-1-862. ~~The department shall certify a copy of the articles and return it to the subscribers.~~ Such filing shall constitute an application for a certificate of incorporation. Immediately upon the filing of the articles, the department shall certify a copy of the articles and return it to the subscribers, who shall, in conformity with Code Section 7-1-7 and no later than the next business day following the filing of the articles, transmit for publication a copy of the articles or, in lieu thereof, a statement in substantially the following form:

94 'An application for a certificate of incorporation of a credit union to be known as the
95 _____ and to be located at _____ in
96 _____ County, Georgia, will be made to the Secretary of State of Georgia by
97 (names and counties of residence of subscribers) in accordance with Chapter 1 of
98 Title 7 of the Official Code of Georgia Annotated, the "Financial Institutions Code
99 of Georgia." A copy of the articles of incorporation of such proposed credit union and
100 the application have been filed with the Department of Banking and Finance. The
101 following persons have been proposed as the initial directors: (names and counties of
102 residence of proposed directors).'

103 to the newspaper which is the official organ of the county where the main office will be
104 located. The articles or statement must be published once a week for two consecutive
105 weeks with the first publication occurring within ten days of receipt by the newspaper of
106 the articles or statement.

107 (d) The subscriber shall file with the department a certificate from the Secretary of State
108 attesting that the name of the proposed credit union has been reserved as authorized by
109 Code Section 7-1-131.

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

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

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

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

120 (4) The conditions under which deposits are received and withdrawn; and

(5) The charges which shall be made, if any, for failure to meet obligations punctually; whether or not the credit union shall have the power to borrow; and such other matters consistent with this article as may be requisite to the organization and operation of the proposed credit union.

(f) The subscriber shall pay such fee as shall be established by regulation of the department to defray the cost of the investigation required by Code Section 7-1-632, provided that the department shall not be required to set such fee if in its judgment the fee would discourage the organization of credit unions under this article.

(g) The subscriber shall select at least five qualified persons who agree to serve on the board of directors. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree and filed with the department along with the proposed bylaws.

(h) For the purposes of this article, the term 'executive officer' means an individual who performs significant managerial, supervisory, or policy-making functions on behalf of a credit union, including, but not limited to, the chief executive officer, president, chief financial officer, chief operating officer, and other individuals who perform such functions."

SECTION 5.

Said title is further amended in said article by revising Code Section 7-1-632, relating to approval or disapproval by department and certificate of incorporation, as follows:

"7-1-632.

(a) The department shall make an appropriate investigation of the articles and bylaws for the purpose of determining:

(1) Whether the articles and bylaws conform to this article;

(2) The general character and qualifications of the subscribers, the proposed directors, and the executive officers and the financial stability and future prospects of the sponsoring company, if any;

(3) The economic advisability of establishing the proposed credit union and such other facts and circumstances bearing on the proposed credit union as in the opinion of the department may be relevant;

(4) That a common bond exists in accordance with Code Section 7-1-630; ~~and~~

(5) That the subscribers and person or corporation sponsoring the credit union are in agreement as to the services, if any, that the sponsor will provide;

(6) Whether the convenience and needs of the public will be served by the proposed credit union; and

(7) Whether the capital structure of the proposed credit union is adequate in relation to the amount and character of the anticipated business of the credit union and the safety of prospective members.

(b) If the department determines to its satisfaction that the proposed credit union meets the criteria set forth above, it shall, within 90 days from receipt of the articles and in compliance with Code Section 7-1-630, send a copy of the articles and written approval of the articles to the Secretary of State after making such changes in the articles or bylaws consistent with this article and with the consent of the subscribers that it deems appropriate; provided, however, that, if the approval of a federal public body is also required with respect to the proposed credit union, then the department may elect to not act on the application until after such approval is given. Such approval shall indicate any changes made to the articles including changes from the proposed field of membership. If the department shall disapprove the articles, the procedures of subsection (b) of Code Section 7-1-635 shall be followed.

(c) Upon receipt of the approval of the department, the Secretary of State shall thereupon issue a certificate attesting to the incorporation of the credit union. The credit union shall, however, confine itself to organizational activities until it receives a permit to do business."

SECTION 6.

Said title is further amended in said article by revising paragraph (3) of subsection (b) of Code Section 7-1-658, relating to loans, as follows:

"(3) In lieu of a credit committee, the board of directors may appoint one or more loan officers and delegate to such persons the power to approve or disapprove loans to a borrower that do not in the aggregate exceed 5 percent of the net worth of the credit union subject to such limitations or conditions set forth in this Code section for loans generally and such further limitations and conditions as the board may prescribe. All other duties of the credit committee as described in this article shall become the duties of the board of directors. Records of loans approved shall be maintained by the loan officers in such form as the board shall prescribe and ~~a listing of all loans made, including the name of the borrower and the amount of the loan, shall be submitted to the board at each meeting~~ shall be made available to the board upon request; and"

SECTION 7.

Said title is further amended in Article 4 of Chapter 1, relating to money transmission, by adding a new paragraph to Code Section 7-1-680, relating to definitions, to read as follows:

"(8.1) 'Disqualifying crime' means any felony, as defined in Code Section 16-1-3, involving conversion, theft, money laundering, bribery, dishonesty, false statements or omissions, perjury, extortion, breach of trust, forgery, counterfeiting, embezzlement, insider trading, tax evasion, kickbacks, identity theft, cyber attacks, social engineering, fraud, including but not limited to check fraud, credit card fraud, mortgage fraud, medical fraud, corporate fraud, bank account fraud, payment (point of sale) fraud, currency fraud,

195 bank fraud, and securities fraud or a felony directly related to the financial services
196 business."

197 **SECTION 8.**

198 Said title is further amended in said article by adding a new subsection to Code Section
199 7-1-683, relating to requirements for licensure, fees, and rules and regulations, to read as
200 follows:

201 "(e) The department may issue a notice of intent to administratively withdraw an
202 application for a license under this article if an applicant submits a deficient license
203 application by failing to provide any information required by the department. If the
204 applicant fails to provide the requested information within 30 days of the date of issuance
205 of such notice, the application may be administratively withdrawn. The notice shall be
206 deemed provided to the applicant when:

207 (1) Sent via email to the applicant's email address, as provided on the application; or
208 (2) Posted by the department on the Nationwide Multistate Licensing System and
209 Registry."

210 **SECTION 9.**

211 Said title is further amended in said article by revising subsection (c) of Code Section
212 7-1-684, relating to investigation of applicants for licensure and background checks on
213 employees and others, as follows:

214 "(c) The department shall not issue a license or may revoke a license if it finds that the
215 applicant, licensee, or authorized agent; any person who is a director, officer, partner,
216 covered employee, or ultimate equitable owner of the applicant, licensee, or authorized
217 agent; or any individual who directs the affairs of or controls or establishes policy for the
218 applicant, licensee, or authorized agent has been convicted of a felony in any jurisdiction

or of a crime which, if committed within this state, would constitute a felony under the laws of this state;

(1) Within the previous seven years; or

(2) At any time, if such felony is a disqualifying crime.

For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty or nolo contendere to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered or an adjudication or sentence was otherwise withheld or not entered on that charge, unless and until such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender without adjudication of guilt have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction occurred."

SECTION 10.

Said title is further amended in Article 4A of Chapter 1, relating to cashing of payment instruments, by adding a new paragraph to Code Section 7-1-700, relating to definitions, to read as follows:

"(8.1) 'Disqualifying crime' means any felony, as defined in Code Section 16-1-3, involving conversion, theft, money laundering, bribery, dishonesty, false statements or omissions, perjury, extortion, breach of trust, forgery, counterfeiting, embezzlement, insider trading, tax evasion, kickbacks, identity theft, cyber attacks, social engineering, fraud, including but not limited to check fraud, credit card fraud, mortgage fraud, medical

245 fraud, corporate fraud, bank account fraud, currency fraud, bank fraud, and securities
246 fraud or a felony directly related to the financial services business."

247 **SECTION 11.**

248 Said title is further amended in said article by adding a new subsection to Code Section
249 7-1-702, relating to requirements for licensure, to read as follows:

250 "(e) The department may issue a notice of intent to administratively withdraw an
251 application for a license under this article if an applicant submits a deficient license
252 application by failing to provide any information required by the department. If the
253 applicant fails to provide the requested information within 30 days of the date of issuance
254 of such notice, the application may be administratively withdrawn. The notice shall be
255 deemed provided to the applicant when:

256 (1) Sent via email to the applicant's email address, as provided on the application; or
257 (2) Posted by the department on the Nationwide Multistage Licensing System and
258 Registry."

259 **SECTION 12.**

260 Said title is further amended in said article by revising subsection (c) of Code Section
261 7-1-703, relating to investigation of applicants and background checks of employees and
262 others, as follows:

263 "(c) The department shall not issue a license or may revoke a license if it finds that the
264 applicant or licensee; any person who is a director, officer, partner, covered employee, or
265 ultimate equitable owner of the applicant or licensee; or any individual who directs the
266 affairs of or controls or establishes policy for the applicant or licensee has been convicted
267 of a felony in any jurisdiction or of a crime which, if committed within this state, would
268 constitute a felony under the laws of this state;

269 (1) Within the previous seven years; or

(2) At any time, if such felony is a disqualifying crime.

For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty or nolo contendere to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered or an adjudication or sentence was otherwise withheld or not entered on that charge, unless and until such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender without adjudication of guilt have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction occurred."

SECTION 13.

Said title is further amended in Article 13 of Chapter 1, relating to foreign banking institutions, by revising Code Section 7-1-1000, relating to definitions, as follows:

"7-1-1000.

As used in this article, the term:

(1) 'Affiliate' or 'person affiliated with' means, when used with reference to a specified person, a person who directly, indirectly, or through one or more intermediaries controls, is controlled by, or is under common control with the person specified. Any beneficial owner of 10 percent or more of the securities of a person or any executive officer, director, trustee, joint venturer, or general partner of a person is an affiliate of such person unless the shareholder, executive officer, director, trustee, joint venturer, or general

partner shall prove that he or she in fact does not control, is not controlled by, or is not under common control with such person.

(1.1) 'Allowable assets for liquidity' means:

(A) Unrestricted cash and cash equivalents; and

(B) Unencumbered investment grade assets held for sale or trade; mortgage-backed securities or other obligations of government sponsored entities and obligations of the United States Department of Treasury.

(2) 'Audited financial statement' means the product of the examination of financial statements in accordance with generally accepted auditing standards by an independent certified public accountant, which product consists of an opinion on the financial statements indicating their conformity with generally accepted accounting principles.

(2.1) 'Board of directors' means the formal body established by a licensee that is responsible for corporate governance and compliance with this article.

(3) 'Commissioner' means the commissioner of banking and finance.

(4) 'Commitment' or 'commitment agreement' means a statement by a lender required to be licensed under this article that sets forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower.

(5) 'Control,' including 'controlling,' 'controlled by,' and 'under common control with,' means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting or nonvoting securities, by contract, or otherwise.

(5.1) 'Corporate governance' means the structure of a licensee and how it is managed including the corporate rules, policies, processes, and practices used to oversee and manage the licensee.

(5.2) 'Covered employee' means any employee of a mortgage lender or mortgage broker who is involved in residential mortgage loan related activities for property located in Georgia and includes, but is not limited to, a mortgage loan originator, processor, or

underwriter, or other employee who has access to residential mortgage loan origination, processing, or underwriting information.

(5.3) 'Covered servicer' means a mortgage lender with a servicing portfolio of 2,000 or more residential mortgage serviced or subserviced loans as reported in the mortgage lender's Mortgage Call Report as of the most recent calendar year end, excluding whole loans owned, reverse mortgages that are serviced or subserviced for others, and loans being interim serviced prior to sale.

(6) 'Department' means the Department of Banking and Finance.

(7) 'Depository institution' has the same meaning as in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(c), and includes any credit union.

(7.1) 'Disqualifying crime' means any felony, as defined in Code Section 16-1-3, involving conversion, theft, money laundering, bribery, dishonesty, false statements or omissions, perjury, extortion, breach of trust, forgery, counterfeiting, embezzlement, insider trading, tax evasion, kickbacks, identity theft, cyber attacks, social engineering, fraud, including but not limited to check fraud, credit card fraud, mortgage fraud, medical fraud, corporate fraud, bank account fraud, payment (point of sale) fraud, currency fraud, bank fraud, and securities fraud, or a felony directly related to the financial services business.

(8) 'Dwelling' means a residential structure that contains one to four units, whether or not that structure is attached to real property pursuant to Regulation Z Section 226.2(a)(19). The term includes an individual condominium unit, cooperative unit, mobile home, and trailer if it is used as a residence.

(9) 'Executive officer' means the chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person's business, the secretary, the treasurer, or any other person performing similar managerial or supervisory functions with respect to any organization whether incorporated or unincorporated.

(9.1) 'External audit' means a formal report prepared by an independent certified public accountant expressing an opinion on whether a licensee's financial statements are presented fairly, in all material aspects, in accordance with the applicable financial reporting framework, and is inclusive of an evaluation of the adequacy of a licensee's internal control structure.

(10) 'Extortionate means' means the use or the threat of violence or other criminal means to cause harm to the person, reputation of the person, or property of the person.

(11) 'Federal banking agencies' means the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation. Such term shall also include the Board of Governors of the Federal Reserve System.

(12) 'Georgia Residential Mortgage Act' means this article, which also includes certain provisions in order to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(12.1) 'Government sponsored entity' means a quasi-public entity that facilitates credit access in the residential mortgage market, including but not limited to, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association.

(13) 'Individual' means a natural person.

(13.1) 'Interim serviced prior to sale' means the activity of collecting a limited number of contractual mortgage payments immediately after origination on loans held for sale but prior to the loans being sold into the secondary market.

(13.2) 'Internal audit' means a licensee's internal activity of performing independent, objective assurance and consulting to evaluate and improve the effectiveness of the licensee's processes related to operations, risk management, internal controls, and governance.

(14) 'License' means a license issued by the department under this article to act as a mortgage loan originator, mortgage lender, or mortgage broker.

(14.1) 'Liquidity' means access to unrestricted cash and cash equivalents, capacity to obtain funds at a reasonable cost, and the ability to meet obligations as they become due.

In the case of a licensee that services mortgage loans, such term encompasses the financial resources necessary to manage liquidity risk arising from servicing functions required in acquiring and financing mortgage servicing rights; hedging costs, including margin calls, associated with the mortgage servicing rights and financing facilities; and advances or costs of advance financing for principal, interest, taxes, insurance, and any other servicing related advances.

(15) 'Loan processor or underwriter' means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing. For purposes of this paragraph, the term 'clerical or support duties' may include, subsequent to the receipt of an application, the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms. An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

(16) 'Lock-in agreement' means a written agreement whereby a lender or a broker required to be licensed under this article guarantees for a specified number of days or until a specified date the availability of a specified rate of interest for a mortgage loan, a specified formula by which the rate of interest will be determined, or a specific number

of discount points if the mortgage loan is approved and closed within the stated period of time.

(17) 'Makes a mortgage loan' means to advance funds, offer to advance funds, or make a commitment to advance funds to an applicant for a mortgage loan.

(18) 'Misrepresent' means to make a false statement of a substantive fact. Misrepresent may also mean to intentionally engage in any conduct which leads to a false belief which is material to the transaction.

(18.1) 'Mortgage-backed security' means a financial instrument, including, but not limited to, an asset backed security, that is secured by residential property.

(19)(A) 'Mortgage broker' means any person who directly or indirectly solicits, processes, places, or negotiates mortgage loans for others; offers to solicit, process, place, or negotiate mortgage loans for others; or closes mortgage loans which may be in the mortgage broker's own name with funds provided by others, and which loans are assigned to the mortgage lenders providing the funding of such loans within 24 hours of the funding.

(B) The term does not include a retailer or retail broker of a manufactured or mobile home as defined in Code Section 8-2-131 or a residential industrialized building as defined in Code Section 8-2-111:

(i) Whose residential mortgage loan activities are limited to compiling and transmitting residential mortgage loan applications along with related supporting documentation to mortgage lenders who are licensed or exempt from the licensing provisions of this article or communicating with residential mortgage loan applicants as necessary to obtain additional documents that complete the residential mortgage loan application to those licensed or exempt mortgage lenders; and

(ii) Who does not receive any payment or fee from any person for assisting the applicant to apply for or obtain financing to purchase the manufactured home, mobile home, or residential industrialized building.

(C) The term does not include an employee of a retailer or retail broker of a manufactured or mobile home as defined in Code Section 8-2-131 or a residential industrialized building as defined in Code Section 8-2-111 who:

(i) Satisfies the requirements set forth in paragraph (B) of this paragraph;

(ii) Is acting within the scope of employment and under the supervision of the retailer or retail broker as an employee and not as an independent contractor;

(iii) Is employed by only one such retailer or retail broker and shall be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004;

(iv) Has not been issued a cease and desist order in the past five years if such order was based on a violation of Code Section 7-1-1002 or 7-1-1013; and

(v) Has not had a mortgage lender, mortgage broker, or mortgage loan originator license revoked within the past five years.

(19.1) 'Mortgage Call Report' means the quarterly or annual report of residential mortgage loan origination, servicing, and financial information completed by licensees pursuant to subsection (b) of Code Section 7-1-1004.1.

(20) 'Mortgage lender' means any person who directly or indirectly makes, originates, underwrites, holds, or purchases mortgage loans or who services mortgage loans.

(21) 'Mortgage loan' means a loan or agreement to extend credit made to a natural person, which loan is secured by a deed to secure debt, security deed, mortgage, security instrument, deed of trust, or other document representing a security interest or lien upon any interest in one-to-four family residential property located in Georgia, regardless of where made, including the renewal or refinancing of any such loan.

(22) 'Mortgage loan originator' means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. Generally, this does not include an individual engaged solely as a loan processor or underwriter except as otherwise

provided in subsection (a.1) of Code Section 7-1-1002; a person or entity that only performs real estate brokerage activities and is licensed in accordance with Georgia law unless the person or entity is compensated by a mortgage lender, mortgage broker, or other mortgage loan originator or by any agent of such mortgage lender, mortgage broker, or other mortgage loan originator; and does not include a person or entity solely involved in extensions of credit relating to time-share plans, as that term is defined in 11 U.S.C. Section 101(53D).

(22.1) 'Mortgage servicing rights' means the contractual right to service mortgage loans on behalf of the owner of the associated mortgage in exchange for specified compensation in accordance with the servicing contract.

(22.2) 'Mortgage servicing rights investor' or 'master servicer' means a person that invests in and owns mortgage servicing rights and relies on subservicers to administer the loans on such person's behalf.

(23) 'Nationwide Multistate Licensing System and Registry' means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators, mortgage loan brokers, and mortgage loan lenders, or its successor.

(23.1) 'Net worth' means:

(A) With respect to a mortgage broker or a mortgage lender that is not a covered servicer, the total equity less receivables due from related entities less goodwill and other intangibles less pledged assets; and

(B) With respect to a mortgage lender that is a covered servicer, shall have the same meaning as provided in Federal Housing Finance Agency's Eligibility Requirements for Enterprise Single-Family Seller/Servicer.

(24) 'Nontraditional mortgage product' means any mortgage product other than a 30 year fixed rate mortgage.

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

(26) 'Real estate brokerage activity' means any activity that involves offering or providing real estate brokerage services to the public, including acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction; engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and offering to engage in any activity or act in any capacity described herein.

(27) 'Registered mortgage loan originator' means any individual who meets the definition of mortgage loan originator, is registered with and maintains a unique identifier through the Nationwide Multistate Licensing System and Registry, and is an employee of:

(A) A depository institution;

(B) A subsidiary that is:

(i) Owned and controlled by a depository institution; and

(ii) Regulated by a federal banking agency; or

(C) An institution regulated by the Farm Credit Administration.

(28) Reserved.

(29) 'Residential property' means improved real property used or occupied, or intended to be used or occupied, as the primary residence of a natural person. Such term does not include rental property or second homes. A natural person can have only one primary residence.

(30) 'Residential mortgage loan' means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual

security interest on a dwelling, as defined in 15 U.S.C. Section 1602 of the Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

(31) 'Residential real estate' means any real property located in Georgia upon which is constructed or intended to be constructed a dwelling.

(31.1) 'Reverse mortgage' means a loan collateralized by residential real estate, typically made to borrowers over 55 years of age, that does not require contractual monthly payments and is typically repaid upon the death of the borrower through the sale of the real estate or through refinancing of the loan by the borrower's heirs.

(31.2) 'Risk management assessment' means the functional evaluations of a licensee performed under a risk management program and the corresponding reports provided to the licensee's board of directors under the relevant governance framework.

(31.3) 'Risk management program' means the policies and procedures of a licensee that are designed to identify, measure, monitor, and mitigate risk and that are sufficient for the level of sophistication of the licensee.

(32) 'Service a mortgage loan' means the collection or remittance or the right to collect or remit payments of principal, interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan.

(32.1) 'Servicer' means a person that services a mortgage loan.

(32.2) 'Servicing portfolio' means the specific portfolio or portfolios of mortgage loans for which a licensee is contractually responsible to the owner or owners of the mortgage loans for the defined servicing activities.

(32.3) 'Subserviced for others' means the contractual activities performed by subservicers on behalf of a servicer or a mortgage servicing rights investor.

(32.4) 'Subservicer' means a person performing routine administration of mortgage loans as an agent of a servicer or mortgage serving rights investor under the terms of a subservicing contract.

(33) 'Ultimate equitable owner' means a natural person who, directly or indirectly, owns or controls an ownership interest in a corporation or any other form of business organization, regardless of whether such natural person owns or controls such ownership interest through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, limited liability companies, partnerships, trusts, joint-stock companies, other entities or devices, or any combination thereof.

(34) 'Unique identifier' means a number or other identifier assigned by protocols established by the Nationwide Multistate Licensing System and Registry.

(35) 'Whole loans' mean those loans where a mortgage and the underlying credit risk is owned and held on the balance sheet of the person with all ownership rights associated with the loans."

SECTION 14.

Said title is further amended in said article by adding a new subsection to Code Section 7-1-1003, relating to applications for licenses, to read as follows:

"(d) The department may issue a notice of intent to administratively withdraw an application for a license under this article if an applicant submits a deficient license application by failing to provide any information required by the department. If the applicant fails to provide the requested information within 30 days of the date of issuance of such notice, the application may be administratively withdrawn. The notice shall be deemed provided to the applicant when:

(1) Sent via email to the applicant's email address, as provided on the application; or

(2) Posted by the department on the Nationwide Multistage Licensing System and registry."

SECTION 15.

Said title is further amended in said article by revising subsections (e) and (i) of Code Section 7-1-1004, relating to investigation of applicant, requirements for applicant, and denial and revocation of license, as follows:

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

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

(2) Has not been convicted of, or pleaded guilty or nolo contendere to, a felony in a domestic, foreign, or military court, regardless of whether first offender treatment without adjudication of guilt was entered:

(A) Within the previous seven years; or

(B) At any time, if such felony is a disqualifying crime;

provided, however, that any pardon of a conviction shall not be a conviction for purposes of this subsection;

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

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

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

"(i) The department shall not issue or may revoke a license if it finds that the mortgage loan originator, mortgage broker, or mortgage lender applicant or licensee, or any person

587 who is a director, officer, partner, covered employee, or ultimate equitable owner of 10
588 percent or more of the mortgage broker or mortgage lender applicant or licensee or any
589 individual who directs the affairs or establishes policy for the mortgage broker or mortgage
590 lender applicant or licensee, has been convicted of a felony in any jurisdiction or of a crime
591 which, if committed within this state, would constitute a felony under the laws of this state.
592 Other than a mortgage loan originator, for the purposes of this article, a person shall be
593 deemed to have been convicted of a crime if such person shall have pleaded guilty or nolo
594 contendere to a charge thereof before a court or federal magistrate or shall have been found
595 guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict
596 of a jury; within the previous seven years or at any time, if such felony is a disqualifying
597 crime, irrespective of the pronouncement of sentence or the suspension thereof, and
598 regardless of whether first offender treatment without adjudication of guilt pursuant to the
599 charge was entered, or an adjudication or sentence was otherwise withheld or not entered
600 on the charge, unless and until such plea of guilty, or such decision, judgment, or verdict,
601 shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or
602 until probation, sentence, or both probation and sentence of a first offender without
603 adjudication of guilt have been successfully completed and documented, or unless the
604 person convicted of the crime shall have received a pardon therefor from the President of
605 the United States or the governor or other pardoning authority in the jurisdiction where the
606 conviction occurred. For purposes of ~~this article~~ subsection (e) of this Code section, a
607 mortgage loan originator shall be deemed to have been convicted of a crime if he or she has
608 pleaded guilty to, been found guilty of, or entered a first offender or nolo contendere plea
609 to a felony in a domestic, foreign, or military court; provided, however, that any pardon of
610 a conviction shall not be a conviction."

SECTION 16.

Said title is further amended in said article by revising Code Section 7-1-1004.1, relating to reports of condition, as follows:

"7-1-1004.1.

Each mortgage broker and mortgage lender shall submit to the Nationwide Multistate Licensing System and Registry:

(1) Reports ~~reports~~ of condition, which shall be in such form and shall contain such information as the department and the Nationwide Multistate Licensing System and Registry may require; and

(2) Quarterly and annual reports of residential mortgage loan origination, servicing, and financial information in such form as required by the department and the Nationwide Multistate Licensing System and Registry."

SECTION 17.

Said title is further amended in said article by revising Code Section 7-1-1010, relating to annual financial statements, as follows:

"7-1-1010.

~~(a) If a mortgage broker is a United States Department of Housing and Urban Development loan correspondent, such broker shall also submit to the department the audit that is required for the United States Department of Housing and Urban Development.~~
Mortgage brokers shall, at least once each year, submit to the department a financial statement that is unaudited and prepared in accordance with generally accepted accounting principles and certified by the licensee; provided, however, that mortgage brokers may elect to submit to the department an audited financial statement to satisfy this requirement.
In the event that the mortgage broker submits to the department an unaudited financial statement prepared in accordance with generally accepted accounting principles in lieu of an audited financial statement, the ~~The~~ department may require the mortgage broker to

637 have ~~made~~ an audit of the books and affairs of the licensed business and submit to the
638 department an audited financial statement if the department finds that such an audit is
639 necessary to determine whether the mortgage broker is complying with the provisions of
640 this article and the rules and regulations adopted in furtherance of this article.

641 (b)(1) Each mortgage lender licensed under this article shall, at least once each year,
642 have ~~made~~ an external audit of the books and affairs of the licensed business, including
643 ~~and submit to the department at renewal~~ an audited financial statement, except that a
644 mortgage lender licensed under this article which is a subsidiary shall comply with this
645 provision by annually providing a consolidated audited financial statement of its parent
646 company and a financial statement, which may be unaudited, of the licensee ~~which that~~
647 is prepared in accordance with generally accepted accounting principles. The external
648 audit and audited financial statement shall be made available to the department as
649 required by the department except as provided in paragraph (2) of this subsection. A
650 ~~lender who utilizes a bond in lieu of an audit need not supply such audit, unless specially~~
651 ~~required by the department. An audit shall be less than 15 months old to be acceptable.~~
652 (2) Based on the total assets of the mortgage lender, the complexity of the mortgage
653 lender, the number of loans made by the mortgage lender, or other factors, the department
654 may enact rules and regulations authorizing certain mortgage lenders to provide financial
655 statements under paragraph (1) of this subsection that are unaudited.
656 (c) The department may by regulation establish additional minimum standards for audits
657 and reports under this Code section."

658 SECTION 18.

659 Said title is further amended in said article by revising subparagraph (1)(B) of Code Section
660 7-1-1016, relating to regulations relative to advertising, as follows:

661 "(B) An advertisement shall not include an individual's loan number, loan amount, or
662 other publicly available information unless it is clearly and conspicuously stated in

boldface type at the beginning of the advertisement that the person disseminating it is not authorized by, in sponsorship with, or otherwise affiliated with the individual's lender, ~~which shall be identified by name~~. Such an advertisement shall also state that the loan information contained therein was not provided by the recipient's lender; and"

SECTION 19.

Said title is further amended in said article by adding a new Code section to read as follows:

"7-1-1022.

(a) Mortgage lenders and mortgage brokers must maintain capital, net worth, and liquidity in compliance with this Code section. For entities within a holding company or affiliated group of companies, compliance with these requirements shall be measured solely at the licensee level.

(b) For the purposes of complying with the capital, net worth, and liquidity requirements of this Code section, all financial data must be reported in accordance with generally accepted accounting principles.

(c) Capital, minimum net worth, and liquidity, to the extent applicable, shall be continuously maintained by licensees in the following amounts:

(1) If the licensee is a mortgage broker, then it shall maintain a net worth of at least \$50,000.00;

(2) If the licensee is a mortgage lender that is not a covered servicer, then it shall maintain a net worth of at least \$100,000.00 and evidence of liquidity of \$1 million which may include a warehouse line of credit; and

(3) If the licensee is a mortgage lender that is a covered servicer, then it shall maintain capital, net worth, and liquidity that meets the Federal Housing Finance Agency Eligibility Requirements for Enterprise Single-Family Seller/Servicer, regardless of whether the covered servicer is approved for government sponsored enterprise servicing.

(d) Mortgage lenders and mortgage brokers shall maintain written policies and procedures implementing the applicable capital, net worth, and liquidity requirements of this Code section. Such policies and procedures shall include a sustainable written methodology for satisfying the requirements of subsection (c) of this Code section and be made available to the department upon request.

(e) In addition to the amounts required for liquidity under subsection (c) of this Code section, covered servicers shall maintain sufficient liquidity to cover normal business operations.

(f) Mortgage lenders shall have in place sound cash management and business operating plans that match the size and sophistication of the mortgage lender to ensure normal business operations. Management shall develop, establish, and implement plans, policies, and procedures for maintaining liquidity sufficient for the ongoing operational needs of the mortgage lender. Such plans, policies, and procedures shall contain sustainable, written methodologies for maintaining sufficient liquidity for operations of the licensee and be made available to the department upon request."

SECTION 20.

Said title is further amended in said article by adding a new Code section to read as follows:

"7-1-1023.

(a) Mortgage brokers and mortgage lenders shall establish and maintain a board of directors.

(b) Except for covered servicers that are approved to service loans by government sponsored entities and that have not been granted approval by such federal agencies for the creation of an alternative body to that of a board of directors, mortgage lenders and mortgage brokers may establish a similar body to that of the board of directors for the purpose of exercising oversight and fulfilling the board of directors' responsibilities set forth in subsection (c) of this Code section.

714 (c) The board of directors shall be responsible for:

715 (1) Establishing a written corporate governance framework appropriate for the size,
716 complexity, and risk profile of the mortgage lender or mortgage broker, including internal
717 controls designed to monitor corporate governance and assess compliance with the
718 corporate governance framework, and making such framework available to the
719 department upon request;

720 (2) Monitoring and ensuring licensee's compliance with the corporate governance
721 framework and with the provisions of this article; and

722 (3) Accurate and timely regulatory reporting, including the requirements for filing the
723 Mortgage Call Report.

724 (d) The board of directors shall establish internal audit requirements that are appropriate
725 for the size, complexity, and risk profile of the mortgage lender or mortgage broker, with
726 appropriate independence to provide a reliable evaluation of the licensee's internal control
727 structure, risk management, and corporate governance. Such internal audit requirements
728 and the results of internal audits shall be made available to the department upon request.

729 (e) Mortgage lenders and mortgage brokers shall establish a risk management program
730 appropriate for the size, complexity, and risk profile of the licensee that identifies,
731 measures, monitors, and controls risk sufficient for the level of sophistication of the
732 licensee. Such risk management program shall have appropriate processes and models in
733 place to measure, monitor, and mitigate financial risks and changes to the risk profile of
734 the licensee; be under the oversight of the board of directors; and be available to the
735 department upon request.

736 (f) Mortgage lenders and mortgage brokers shall conduct a risk management assessment
737 on an annual basis concluding with a formal report to the board of directors, which shall
738 be made available to the department upon request. Evidence of risk management activities
739 throughout the year must be maintained and made part of the report, including findings of
740 issues and the response to address such findings.

(g) The department shall have the following authority to address risk in mortgage lenders and mortgage brokers as necessary:

(1) Where risk is determined by a formal review of a specific mortgage lender or mortgage broker to be extremely high, the department may order or direct the mortgage lender or mortgage broker to satisfy additional conditions necessary to ensure that the mortgage lender or mortgage broker will continue to operate in a safe and sound manner and remain in compliance with state and federal law, including applicable state and federal regulations;

(2) Where risk is determined by a formal review of a particular or multiple mortgage lenders or mortgage brokers to be extremely low, the department may provide notice that all or part of this Code section and related rules are not applicable to those mortgage lenders or mortgage brokers; and

(3) Where economic, environmental, or societal events are determined to be of such severity to warrant a temporary suspension of all or certain sections of this Code section and related rules, the department may provide public notice of such temporary suspension.

(h) Mortgage brokers and mortgage lenders may utilize a third party to assist with satisfying some or all of the requirements of this Code section."

SECTION 21.

Said title is further amended in Article 14, relating to foreign banking institutions, by revising paragraph (28) of Code Section 7-1-1100, relating to definitions, as follows:

"(28) 'State' means a state of the United States or the District of Columbia."

SECTION 22.

Said title is further amended in said article by revising Code Section 7-1-1110, relating to service of process, as follows:

766 "7-1-1110.

767 Except as provided in Code Sections ~~7-1-1109~~ 7-1-1108, 7-1-1112, 7-1-1127, and
768 7-1-1135, a foreign bank operating in this state at a branch, agency, or representative office
769 shall be subject to service of process at such location."

770 **SECTION 23.**

771 Said title is further amended in said article by revising subsection (b) of Code Section
772 7-1-1111, relating to application procedures, as follows:

773 "(b) The department may adopt rules and regulations prescribing abbreviated application
774 or notice procedures and standards applicable to ~~applications by~~ foreign banks to establish
775 additional Georgia state branches or Georgia state agencies that have already established
776 an initial Georgia state branch or Georgia state agency."

777 **SECTION 24.**

778 Said title is further amended in said article by revising subsection (b) of Code Section
779 7-1-1118, relating to amending license and requirements, as follows:

780 "(b) The requirements with respect to the form and contents of an application or notice
781 under subsection (a) of this Code section, the manner of its execution, the issuance of an
782 amended license, and the effect of the amended license shall be ~~the same as in the case of~~
783 ~~an initial application for a license to establish and maintain a Georgia state branch or~~
784 ~~Georgia state agency~~ in the form and manner as required by the department."

785 **SECTION 25.**

786 Said title is further amended in said article by revising subsection (b) of Code Section
787 7-1-1119, relating to act of relocating and notice, as follows:

788 "(b) A foreign bank ~~may~~ shall submit a ~~letter form application~~ notification to the
789 department of its intent to relocate an existing Georgia state branch or Georgia state agency

no less than 30 days in advance of such relocation. The department may require an application for such relocation if the notification raises supervisory concerns. ~~Unless the department denies the application, the approval to relocate an existing Georgia state branch or Georgia state agency under this Code section shall be effective at the earlier of:~~

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

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

SECTION 26.

Said title is further amended in said article by revising Code Section 7-1-1121, relating to notice of uninsured deposits, as follows:

"7-1-1121.

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

SECTION 27.

Said title is further amended in said article by revising Code Section 7-1-1123, relating to value of assets and deposits, minimum requirements, and reporting, as follows:

"7-1-1123.

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

(1) United States dollar deposits;

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

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

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

(5) Repurchase agreements; or

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

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

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

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

Notwithstanding ~~the above deposit requirement~~ subsection (b) of this Code section, the department is authorized to enact rules and regulations pursuant to this article to establish a maximum dollar amount of ~~deposited investment securities and dollar deposits pledged~~ assets for certain highly rated foreign banks. For prudential or supervisory reasons, the

department may require that a foreign bank has ~~deposited investment securities and dollar deposits~~ pledged assets above the minimum amount.

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

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

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

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

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

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

SECTION 28.

Said title is further amended in said article by revising Code Section 7-1-1132, relating to location and authority of offices and relocation, as follows:

866 "7-1-1132.

867 A Georgia state representative office may engage in the activities authorized by this article
868 at each location registered with the department as a representative office. A Georgia state
869 representative office may change its location in this state by filing a ~~letter form application~~
870 notification with the department containing the street address and mailing address of the
871 new location no less than 30 days in advance of relocation. The department may require
872 an application for such relocation if the notification raises supervisor concerns. Unless the
873 ~~department denies the application, the approval to relocate an existing Georgia state~~
874 ~~representative office under this Code section will be effective at the earlier of:~~

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

876 (2) ~~Ten business days following the date of the department's acknowledged receipt of the~~
877 ~~application.~~

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

880 SECTION 29.

881 Said title is further amended in said article by revising Code Section 7-1-1138, relating to
882 continuing registration, as follows:

883 "7-1-1138.

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

888 SECTION 30.

889 Said title is further amended in Article 1 of Chapter 3, relating to general provisions, by
890 adding a new paragraph to Code Section 7-3-3, relating to definitions, as follows:

891 "(3.1) 'Disqualifying crime' means any felony, as defined in Code Section 16-1-3,
892 involving conversion, theft, money laundering, bribery, dishonesty, false statements or
893 omissions, perjury, extortion, breach of trust, forgery, counterfeiting, embezzlement,
894 insider trading, tax evasion, kickbacks, identity theft, cyber attacks, social engineering,
895 fraud, including but not limited to check fraud, credit, card fraud, mortgage fraud, medical
896 fraud, corporate fraud, bank account fraud, payment (point of sale) fraud, currency fraud,
897 bank fraud, and securities fraud or a felony directly related to the financial services
898 business."

899 **SECTION 31.**

900 Said title is further amended in Article 3 of Chapter 3, relating to licensing, by adding a new
901 subsection to Code Section 7-3-20, relating to licensing application and fee, to read as
902 follows:

903 "(c) The department may issue a notice of intent to administratively withdraw an
904 application for a license under this article if an applicant submits a deficient license
905 application by failing to provide any information required by the department. If the
906 applicant fails to provide the requested information within 30 days of the date of issuance
907 of such notice, the application may be administratively withdrawn. The notice shall be
908 deemed provided to the applicant when:

- 909 (1) Sent via email to the applicant's email address, as provided on the application; or
910 (2) Posted by the department on the Nationwide Multistate Licensing System and
911 Registry."

912 **SECTION 32.**

913 Said title is further amended in Article 5 of Chapter 3, relating to regulation by department,
914 by revising subsection (a) of Code Section 7-3-42, relating to felony convictions and criminal
915 background checks, as follows:

916 "7-3-42.

917 (a) The department shall not issue a license and may revoke a license if it finds that the
918 applicant or licensee or any director, trustee, owner, executive officer, or covered employee
919 of the applicant or licensee has been convicted of a felony in any jurisdiction or of a crime
920 which, if committed within this state, would constitute a felony under the laws of this state;

921 (1) Within the previous seven years; or

922 (2) At any time, if such felony is a disqualifying crime.

923 For the purposes of this article, a person shall be deemed to have been convicted of a crime
924 if such person shall have pleaded guilty or nolo contendere to a charge thereof before a
925 court or federal magistrate or shall have been found guilty thereof by the decision or
926 judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the
927 pronouncement of sentence or the suspension thereof and regardless of whether first
928 offender treatment without adjudication of guilt pursuant to the charge was entered or an
929 adjudication or sentence was otherwise withheld or not entered on that charge, unless and
930 until such plea of guilty or nolo contendere or such decision, judgment, or verdict shall
931 have been set aside, reversed, or otherwise abrogated by lawful judicial process or until
932 probation, sentence, or both probation and sentence of a first offender without adjudication
933 of guilt have been successfully completed and documented or unless the person convicted
934 of the crime shall have received a pardon therefor from the President of the United States
935 or the governor or other pardoning authority in the jurisdiction where the conviction
936 occurred."

937 **SECTION 33.**

938 Said title is further amended in Chapter 9, relating to Georgia merchant acquirer limited
939 purpose bank, by revising Code Section 7-9-7, relating to investigation and requirements and
940 procedure for background checks, as follows:

941 "7-9-7.

942 (a)(1) Upon receipt of the articles of incorporation and the filings and fees from the
943 applicant as required under this chapter, the department shall conduct such investigation
944 as it may deem necessary to ascertain whether it should approve the proposed merchant
945 acquirer limited purpose bank. The department shall approve the charter of a merchant
946 acquirer limited purpose bank if it determines in its discretion that:

947 (A) The articles of incorporation and supporting items satisfy the requirements of this
948 chapter;

949 (B) The character and fitness of the applicant, directors, and proposed officers are such
950 as to warrant the belief that the business of the proposed merchant acquirer limited
951 purpose bank will be honestly and efficiently conducted; and

952 (C) The capital structure of the merchant acquirer limited purpose bank is adequate in
953 relation to the amount and character of the anticipated business of the merchant acquirer
954 limited purpose bank.

955 (2) Within 90 days after receipt of the articles of incorporation and the filings and fees
956 from the applicant as required by this chapter, the department shall approve or disapprove
957 the charter of the proposed merchant acquirer limited purpose bank. The department may
958 impose conditions to be satisfied prior to the issuance of its approval of the charter of a
959 merchant acquirer limited purpose bank. If the department, in its discretion, approves the
960 charter of the proposed merchant acquirer limited purpose bank with or without
961 conditions, it shall deliver its written approval of the articles of incorporation and charter
962 to the Secretary of State and notify the applicant of its action. If the department, in its
963 discretion, disapproves the charter of the proposed merchant acquirer limited purpose
964 bank, it shall notify the applicant of its disapproval of the charter and state generally the
965 unfavorable factors influencing its decision. The decision of the department shall be
966 conclusive, except that it may be subject to judicial review as provided in Code Section
967 7-1-90.

(b) No charter shall be issued if the department finds that the applicant, or any holding company, control person, director, officer, partner, or employee of the applicant, has been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state. No control person, director, officer, partner, or employee of a merchant acquirer limited purpose bank shall have been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state. For any merchant acquirer limited purpose bank that is transacting business under a charter approved by the department, the department shall have the suspension and removal powers provided for in Code Section 7-1-71 with respect to any control person, director, officer, partner, or employee of the merchant acquirer limited purpose bank who has been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty or nolo contendere to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, or an adjudication or sentence was otherwise withheld or not entered on that charge, unless and until such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented, or unless the person convicted of the crime shall have received a pardon thereon from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction occurred, ~~or shall have received an official certification of pardon granted by the state's pardoning body where the~~

conviction occurred which removes the legal disabilities resulting from such conviction and restores civil and political rights.

(c) As used in this Code section, the term 'conviction data' means a record of a finding, verdict, or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought. The department shall be authorized to obtain conviction data with respect to any applicant, holding company, merchant acquirer limited purpose bank, or person who is a control person, director, officer, partner, or employee of the applicant or merchant acquirer limited purpose bank. ~~The department may directly submit to the Georgia Crime Information Center two complete sets of fingerprints of such person, together with the required records search fees and such other information as may be required. Fees for background checks that the department administers shall be sent to the department by applicants and merchant acquirer limited purpose banks together with such fingerprints.~~ Criminal history checks may be requested by the department through the Georgia Crime Information Center and the Federal Bureau of Investigation. The department shall have the authority to receive the results of such checks. Fees required for a criminal history record check by the Georgia Crime Information Center or the Federal Bureau of Investigation shall be paid by the applicant or the merchant acquirer limited purpose bank.

(d) Upon request by the department, each applicant, holding company, or merchant acquirer limited purpose bank or any person who is a control person, director, officer, partner, or employee of the applicant or merchant acquirer limited purpose bank shall submit to the department ~~two complete sets of~~ fingerprints, the required records search fees, and such other information as may be required. Fees for background checks that the department administers shall be submitted to the department by applicants and merchant acquirer limited purpose banks together with ~~two complete sets of~~ fingerprints, and the department is authorized to net such fees to recover any costs incurred by the department related to running the background checks. Upon receipt of fingerprints, fees, and other

required information from the department, the Georgia Crime Information Center shall promptly transmit ~~one set of~~ fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and ~~shall retain the other set and~~ promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department ~~or by the applicant or merchant acquirer limited purpose bank~~ shall be used by the party requesting such data department for the exclusive purpose of carrying out the responsibilities of this article, shall not be a public record, shall be confidential, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect the file. All such records shall be maintained by the department ~~and the applicant or merchant acquirer limited purpose bank~~ pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable.

(e) Every applicant and merchant acquirer limited purpose bank shall be authorized and required to obtain and maintain the results of criminal background checks on employees. Such criminal background checks shall be ~~handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center~~ commercial background checks. Applicants and merchant acquirer limited purpose banks shall be responsible for any applicable fees charged by the ~~Georgia Crime Information Center~~ company performing the background check. An applicant or merchant acquirer limited purpose bank may only employ a person whose background data has been checked and been found to be in compliance with all lawful requirements prior to the initial date of hire. This provision does not apply to control persons, directors, officers, or partners, whose backgrounds have been investigated through the department before taking office, beginning employment, or securing ownership. ~~Upon~~

receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an employee has a criminal record in any state other than Georgia, the employer shall submit to the department two complete sets of fingerprints for such person, together with the applicable fees and any other required information. The department shall submit such fingerprints as provided in subsection (d) of this Code section. The department shall be entitled to review the files of any applicant or merchant acquirer limited purpose bank to determine whether the required commercial background checks have been conducted and whether all employees are qualified. Notwithstanding the requirement that applicants and merchant acquirer limited purpose banks conduct such commercial background checks, the department shall retain the right to obtain conviction data of employees of applicants and merchant acquirer limited purpose banks.

(f) Upon request by the department, an applicant or merchant acquirer limited purpose bank must take all steps necessary to have an international criminal history background check performed on any control person, director, officer, partner, or employee. The results of such international criminal history background check must be provided to the department.

~~(g) Applicants and merchant acquirer limited purpose banks shall have the primary responsibility for obtaining background checks on employees. The department shall be entitled to review the files of any applicant or merchant acquirer limited purpose bank to determine whether the required background checks have been run and whether all employees are qualified. The department shall be authorized to discuss the status of employee background checks with applicants or merchant acquirer limited purpose banks. Notwithstanding any other provisions in this article, the department shall retain the right to obtain conviction data on employees of applicants and merchant acquirer limited purpose banks~~ Reserved.

(h) In the event the department denies an application to charter a merchant acquirer limited purpose bank or an application to own or control a merchant acquirer limited purpose bank,

1075 the applicant may submit a new application at any time following notice of final denial.
1076 The applicant shall not be prejudiced by any prior denials by the department."

1077 **SECTION 34.**

1078 Said title is further amended in said chapter by revising subsection (b) of and adding a new
1079 subsection to Code Section 7-9-12.1, relating to treatment of merchant funds, to read as
1080 follows:

1081 "(b) All merchant funds shall be deposited immediately ~~by the merchant acquirer limited~~
1082 ~~purpose bank~~ and shall remain in an account at a financial institution that is federally
1083 insured and authorized to do business in this state until paid over to the individual
1084 merchant; provided, however, that nothing in this Code section shall preclude a merchant
1085 acquirer limited purpose bank from making appropriate deductions for chargebacks, fees,
1086 reserves, and other costs related to providing authorized merchant acquiring services owed
1087 by the individual merchant prior to remitting the net amount to the individual merchant.
1088 At the time of deposit into the account, the funds of the individual merchant in the account
1089 shall be deemed to be the property of the individual merchant. The merchant acquirer
1090 limited purpose bank shall maintain or cause to be maintained account records that identify
1091 individual merchants and the total amount held for each individual merchant. Such records
1092 shall be maintained in good faith and in the ordinary course of business and in a manner
1093 that can be readily ascertained.

1094 (c) Notwithstanding subsection (b) of this Code section, the department may, by regulation
1095 or otherwise, authorize the merchant acquirer limited purpose bank to receive and hold
1096 merchant funds in accordance with alternative safeguarding arrangements designed to
1097 protect merchant funds."

SECTION 35.

1098

1099 Said title is further amended in said chapter by revising subsection (a) of Code Section
1100 7-9-13, relating to regulation and enforcement by department and rules and regulations, as
1101 follows:

1102 "(a) All merchant acquirer limited purpose banks chartered by the department shall be
1103 subject to supervision, regulation, and examination by the department, including, but not
1104 limited to, the examination powers as provided in Code Sections 7-1-64 through 7-1-73,
1105 and the department shall have all enforcement powers provided in this title, including, but
1106 not limited to, the enforcement powers provided in Code Section 7-1-92 and Part 7 of
1107 Article 1 of Chapter 1 of this title."

SECTION 36.

1108

1109 All laws and parts of laws in conflict with this Act are repealed.