

House Bill 781

By: Representatives Williamson of the 115th, Frazier of the 126th, Ridley of the 6th, and Houston of the 170th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to
2 financial institutions, so as to clarify and remove superfluous language; to authorize the
3 department to approve payment of dividends by a bank or trust company under certain
4 conditions; to expand the department's authority to waive the residency requirement for bank
5 or trust company directors; to authorize a trust company and bank merger under certain
6 circumstances; to authorize Georgia banks to conduct certain activities at representative
7 offices outside of Georgia; to change registration and notice requirements for a bank or bank
8 holding company with a representative office; to reduce the number of days the department
9 has to approve or disapprove applications for a branch office; to eliminate the department's
10 authority to waive publication requirement for certain procedures; to add night depository
11 to list of extensions not requiring approval; to update restrictions on location of extensions;
12 to remove notification requirement for out-of-state banks establishing or acquiring additional
13 branches; to replace supervisory committee with audit committee; to change limitations on
14 loans by credit unions; to authorize the department to promulgate regulations related to
15 allowable credit union loans and obligations; to provide for credit union extensions and
16 restrictions thereof; to establish application requirements for credit union branch offices; to
17 eliminate notification methods relating to bond cancellation; to provide that the unique
18 identifier of certain licensees or registrants is not confidential; to reduce the number of days
19 for certain cease and desist orders to become final; to repeal Code Section 7-1-1003.1,
20 relating to physical place of business; to eliminate the notification requirement for a change
21 in ultimate equitable owner of mortgage brokers or mortgage lenders; to change advertising
22 content requirements for mortgage lenders and mortgage brokers; to reduce the number of
23 days for the process related to bond cancellation notice; to amend Chapter 6A of Title 7 of
24 the Official Code of Georgia Annotated, relating to the Georgia Fair Lending Act, so as to
25 update citations to federal regulations; to provide for related matters; to repeal conflicting
26 laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial institutions, is amended by revising paragraph (6) of Code Section 7-1-234, relating to grounds for disapproving proposal, as follows:

"(6) In the case of trust companies, any individual who is an acquiring person party under Code Section 7-1-232 or an individual ~~that who~~ is a director or officer of ~~such an acquiring person party under Code Section 7-1-232~~ has unsatisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation. The department shall be authorized to obtain conviction data with respect to any individual who is an acquiring person party or an individual ~~that who~~ is a director or officer of ~~such person an acquiring party~~, and such individual who is an acquiring person party or an individual ~~that who~~ is a director or officer of ~~such person an acquiring party~~ shall provide express written consent to the department to conduct a criminal background check and to use all information necessary to run such check, including, but not limited to, a classifiable set of fingerprints. The individual who is an acquiring person party or an individual ~~that who~~ is a director or officer of ~~such person an acquiring party~~ shall be responsible for all fees associated with the performance of such criminal background check; or"

SECTION 2.

Said chapter is further amended by revising paragraph (2) of subsection (a) of Code Section 7-1-460, relating to restrictions on payment of dividends and limitation of actions for dividends or distributions, as follows:

"(2) The department may approve the payment of dividends by a ~~Subchapter S bank or trust company~~, prior to the time such bank or trust company achieves cumulative profitability;:

(A) For for the sole purpose of providing its the shareholders of a Subchapter S bank with a source of funds to pay federal and state income taxes on the Subchapter S bank's income that is taxable to those shareholders; or

(B) If a bank or trust company is profitable on an annual basis and the payment of such dividend is consistent with standards of safety and soundness;"

SECTION 3.

Said chapter is further amended by revising Code Section 7-1-480, relating to board of directors, as follows:

"7-1-480.

(a) Administration of the business and affairs of a bank or trust company shall be the responsibility of a board of directors.

(b) Seventy-five percent of the directors shall be citizens of the United States and at least a majority shall:

(1) Reside in Georgia; or

(2) Reside within 40 miles of any banking location authorized to offer a complete banking or trust service.

(c) The residency requirements of paragraphs (1) and (2) of subsection (b) of this Code section shall not apply to banks having branches in states other than Georgia, provided that the residency of directors is consistent with the bank's articles of incorporation and bylaws.

(d) The department may waive or modify the requirements of subsection (b) of this Code section ~~with respect to special purpose banks organized pursuant to subsection (c) of Code Section 7-1-394.~~

(e) Notwithstanding other provisions of this Code section, directors who were legally qualified to serve on April 1, 1975, may continue to serve for such time as they are continuously members of the board of directors of their bank or trust company."

SECTION 4.

Said chapter is further amended by revising subsection (a) of Code Section 7-1-530, relating to authority to merge or consolidate, merger, consolidation, or share exchange across state lines, and required provisions of the merger plan, as follows:

"(a) Upon compliance with the requirements of this part and other applicable laws and regulations, including any branching and minimum age laws and regulations, banks or trust companies may merge or consolidate, provided that ~~an institution exercising trust powers alone~~ a trust company may merge or consolidate ~~only with another such trust company~~ a bank that is authorized to exercise trust powers so long as the resulting institution is a bank.

Upon compliance with the requirements of this part and other applicable laws and regulations, including any branching and minimum age laws and regulations, a corporation other than a bank or trust company may acquire all of the outstanding shares of one or more classes or series of one or more banks or trust companies through a share exchange."

SECTION 5.

Said chapter is further amended by revising Code Section 7-1-591, relating to establishment of representative office by bank or bank holding company domiciled in state, as follows:

94 "7-1-591.

95 (a) A bank domiciled in this state and operating under the laws of this state or a subsidiary
96 or agent of such bank may establish a representative office anywhere in the state upon
97 registering with the department. A bank holding company domiciled in this state and
98 operating under the laws of this state or a nonbank subsidiary or agent of such bank holding
99 company may establish a representative office anywhere in this state upon registering with
100 the department.

101 (b) Subject to any limitation or restrictions of the host state and upon registering the
102 representative office with the department, a Georgia chartered bank may conduct any
103 activities at any representative office outside Georgia that are authorized by Georgia law
104 or that are permissible for a bank chartered by the host state where the representative office
105 is located, except to the extent such activities are expressly prohibited by the laws of this
106 state or by any regulation or order of the commissioner applicable to the Georgia chartered
107 bank and except where the activity is one that requires approval from the department, in
108 which case such approval must be secured; provided, however, that the commissioner may
109 waive any prohibition or requirement for approval if he or she determines, by order or
110 regulation, that the involvement of out-of-state representative offices of the Georgia
111 chartered bank in particular activities would not threaten the safety or soundness of such
112 bank."

113 SECTION 6.

114 Said chapter is further amended by revising Code Section 7-1-593, relating to registration of
115 bank or bank holding company having representative office in state, as follows:

116 "7-1-593.

117 (a) A bank or bank holding company domiciled in this state and having a representative
118 office ~~located in this state~~ shall register such representative office with the department
119 ~~annually on forms prescribed by the department. Such registration shall be filed according~~
120 ~~to regulations issued by the department and shall list the names of all its Georgia~~
121 ~~representative offices, the street address of the offices, the nature of the business to be~~
122 ~~transacted in or through the offices, and such other information as the department may~~
123 ~~require. The department may consolidate these requirements with the holding company~~
124 ~~registration required in Parts 18, 19, and 20 of this article. Prior to closing a representative~~
125 office, such bank or bank holding company must post notice of the closing as required by
126 Code Section 7-1-110.1.

127 (b) The department may review the operations of any representative office annually or at
128 such greater frequency as it deems necessary to assure that the office does not transact a
129 banking business."

SECTION 7.

Said chapter is further amended by revising Code Section 7-1-602, relating to applications for branch offices, as follows:

"7-1-602.

(a) Application to establish a branch office shall be made to the department in such form as it may prescribe from time to time. The department shall exercise its discretion in its consideration of the application; but the department shall not approve the application until it has ascertained to its satisfaction that the public need and advantage will be promoted by the establishment of the proposed branch office, based upon the following factors:

- (1) Reasonable opportunity for the proposed branch office to generate a sufficient profit;
- (2) The character and fitness of the board of directors and management of the bank to command the confidence of the community and to warrant the belief that the business of the bank or trust company at the branch office will be honestly and efficiently conducted;
- (3) The adequacy of the capital structure of the bank or trust company, particularly in view of the anticipated business to be generated by the proposed branch office; and
- (4) The overall financial condition and safety and soundness of the applicant bank or trust company.

Where the department by rule, regulation, or written policy has provided for expedited processing of applications or for notice procedures, it may abbreviate its review of these criteria.

(b) After receipt of a complete application, the department shall have ~~90~~ 30 days within which to approve or disapprove such application.

(c) The department may approve an application contingent upon the satisfaction of additional conditions, including the submission of information such as the date of opening and the capital outlay for the branch office. If the approval of a federal regulatory agency is required with respect to the branch office, the department may at its option withhold its written approval or disapproval until such federal approval is granted or denied or may withdraw its approval if the federal agency fails to act or refuses to grant approval. If the department disapproves the branch office, it shall notify the applicant of its disapproval and state generally in writing the unfavorable factors influencing its decision. The decision of the department is final, except that it may be subject to judicial review as provided in Code Section 7-1-90.

(d) The department may provide by regulation that a bank which meets certain financial and managerial criteria may, in lieu of application, file a written notification with the department at a time to be specified in such regulation. ~~The department may waive publication requirements for such a procedure.~~

(e) All lawfully established banking locations existing on July 1, 1999, other than a bank's main office, shall be known and shall qualify as branch offices.

(f) In the event of merger or consolidation of two or more banks, pursuant to Parts 14 and 15 of this article, the surviving or resulting bank shall designate a main office and may retain and continue to operate any or all banking locations of each constituent bank as branch offices ~~so long as they are consistent with and authorized by this part~~. In the event of the purchase of substantially all of the assets of a bank, subject to the review and approval by the commissioner of such transaction, the purchasing bank may retain and continue to operate any or all banking locations of the selling bank as branch offices ~~so long as they are consistent with and authorized by this part~~.

(g) The department's approval may be revoked if conditions in the approval have not been satisfied or if other violations of law occur as a result of the branch office's opening or operation."

SECTION 8.

Said chapter is further amended by revising Code Section 7-1-603, relating to extension of existing banking locations, automated teller machines, cash dispensing machines, point-of-sale terminals, and other extensions, as follows:

"7-1-603.

(a) An approved banking location may have an extension, which is not a branch or main office, at which banking activities may occur. The extensions described in this Code section do not require approval but may have certain restrictions or required notifications.

(b) The following are extensions:

(1) 'Automated teller machine' means electronic equipment which performs routine banking transactions, including, but not limited to, the taking of deposits for the public at locations off premises of a bank's main or branch office under regulations prescribed by the commissioner. This term includes electronic equipment that utilizes, or has the capability to utilize, live video chat with offsite bank personnel who may assist with banking services, including, but not limited to, account initiation.

(2) 'Cash dispensing machine' means for the purposes of this part and as used in paragraph (4) of subsection (b) of Code Section 7-1-241 an automated or electronic terminal which dispenses cash or scrip redeemable for goods and services or for cash, goods, and services. Such machines may provide account information but may not initiate intrabank transactions other than those necessary and incidental to the dispensing of cash.

(3) 'Night depository' means a drop box where customers can make deposits or payments outside of normal banking hours.

(3)(4) 'Point-of-sale terminal' means electronic equipment located in nonbank business outlets to record electronically with a bank transactions occurring as a result of the sale of goods or services.

For purposes of this Code section, the terms 'automated teller machine,' 'point-of-sale terminal,' ~~and~~ 'cash dispensing machine,' and 'night depository' shall not include personal communication devices such as telephones, computer terminals, modems, and other similar devices which are not accessible to the general public but are intended for use by a single bank customer. It is not the intent of this Code section to limit the ability of banks or other entities to utilize personal communication devices. The department may by regulation further define 'automated teller machine,' 'point-of-sale terminal,' 'cash dispensing machine,' 'night depository,' and 'personal communication device' consistent with the objectives set forth in Code Section 7-1-3.

(c) The following are restrictions on location of an extension:

(1) Any federally insured bank ~~or credit union~~ may operate automated teller machines throughout ~~this~~ the state. These machines may be operated individually by any bank ~~or credit union~~ or jointly on a cost-sharing basis by two or more banks ~~or credit unions~~;

(2) Any bank may operate cash dispensing machines throughout the state. Access to and use of cash dispensing machines may be available to all banks in this state on an individual or a shared basis; ~~and~~

(3) A night depository may be located anywhere in the state; and

~~(3)(4)~~ A point-of-sale terminal may be located anywhere in the state.

(d) An extension not defined in subsection (b) of this Code section is permitted, provided that such extension is located within the boundary lines of a single contiguous area of property owned or leased by the bank and used as a banking location, or if it is within 200 yards of such a banking location. Banking services may be performed at the extension. Written notification to the department is required for such extension."

SECTION 9.

Said chapter is further amended by revising subsection (c) of Code Section 7-1-628.6, relating to powers of out-of-state banks branching into Georgia, as follows:

"(c) An out-of-state bank that has established or acquired a branch in Georgia under this part may establish or acquire additional branches in Georgia to the same extent, but to no greater extent, that any Georgia bank may establish or acquire a branch in Georgia under applicable federal and state law. ~~Notification to the department from the bank is required at the same time as the application is made to the federal regulator. A letter describing the transaction shall constitute the required notification and may be written and sent by the bank or the home state regulator.~~"

SECTION 10.

Said chapter is further amended by revising paragraph (3) of subsection (b) of Code Section 7-1-656, relating to duties of directors, meetings, prohibited activities, eligibility to vote, applicability of Code Section 7-1-490, and appointment of honorary director or director emeritus, as follows:

"(3) Any action authorized to be taken at a meeting of the board of directors or a credit, ~~supervisory audit~~, or other committee may be taken without a meeting if the action is set forth in writing and approved and signed by all directors or all members of the credit, ~~supervisory audit~~, or other committee entitled to vote with respect to the underlying subject matter."

SECTION 11.

Said chapter is further amended by revising Code Section 7-1-658, relating to loans, as follows:

"7-1-658.

(a) Credit unions may lend money to their members at reasonable rates of interest, which shall not exceed 1 1/4 percent each month on the unpaid balance, or such greater rates as shall be authorized for other financial institutions for such purposes as may be approved by the credit committee.

(b) Loans shall be supervised as follows:

(1) The credit committee shall have the general supervision of all loans to members. The credit committee shall hold such meetings as the business of the credit union may require and not less frequently than once each quarter to consider applications for loans. Reasonable notice of such meetings shall be given to all members of the committee.

Actions of the credit committee shall be reported to the board in such form as the board shall prescribe at each regular meeting of the board. No loan shall be made unless it is approved by a majority of the entire committee, except as provided in this Code section;

(2) The credit committee may appoint one or more employees to be 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 credit committee prescribes. Records of loans approved shall be maintained in such form as the credit committee shall prescribe and shall be made available to the credit committee upon request. ~~All loans in excess of 50 percent of a credit union's maximum loan limitation or such lower limit as the credit committee shall establish shall be acted upon by the credit committee.~~ The credit committee may not appoint more than one of its members to be a loan officer. No person shall have the

authority to disburse funds of the credit union for any loan which has been approved by such person;

(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 prescribes~~ 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; and

(4) Members may appeal a credit decision made by a loan officer to the credit committee or to the board if denied by the credit committee. Where there is no credit committee, appeal shall be made to the board.

(c) Loans may be made to officers, directors, and committee members of the credit union under the same general terms and conditions as to other members of the credit union; provided, however, that no officer, director, committee member, or employee shall participate in approving any loan in which he or she has a direct or indirect financial interest. The approval of all loans to officers, directors, and committee members of the credit union shall be reported to the board of directors at its next meeting.

(d) As used in this Code section, the term 'person' or 'corporation' includes, but is not limited to, an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, or unincorporated organization.

~~(d)(e) No credit union shall be authorized to lend to any individual borrower on an unsecured loan more than 1 percent of the first \$100,000.00 of its deposits and shares plus one-fourth of 1 percent of its deposits and shares over \$100,000.00. No credit union shall be authorized to lend to any individual borrower on a secured loan more than 10 percent of the first \$100,000.00 of its deposits and shares plus 4 percent of the next \$1 million of its deposits and shares plus 2 percent of its deposits and shares over \$1.1 million. Deposits and shares reflected in the statement of condition on the last calendar day of the preceding quarter, to the nearest \$100,000.00, shall be used to establish loan limits for the subsequent calendar quarter, provided that where a credit union has less than \$1 million in total shares and deposits, the nearest \$1,000.00 shall be used to establish these limits. Any credit union may make loans up to \$200.00 regardless of the amount of its shares and deposits. The amount loaned to any one borrower on an unsecured basis when added to the amount loaned to any one borrower on a secured basis shall not exceed the limitation set forth in~~

~~this subsection for secured loans, such limitation being the maximum loan limit of the credit union make loans to any one person or corporation where the aggregate of such loans and obligations together exceeds 5 percent of the net worth of the credit union unless each loan in excess of said 5 percent limit is approved in advance by the board of directors or the credit committee subject to the provisions set forth in subsections (f) and (g) of this Code section. Approval by the board of directors or credit committee shall be recorded in the formal minutes of the actions of the board or the credit committee by name of borrower, amount of loan, maturity of loan, general type of collateral, and such other information as required pursuant to the rules and regulations of the department. Any action required by this subsection may be taken as prescribed in Code Section 7-1-656, provided that the minutes of the proceedings of the board of directors or credit committee reflect such action and each director taking such action signs the minutes reflecting such action by no later than the next regular meeting of the board or credit committee attended by such director.~~

~~(e) For purposes of subsection (d) of this Code section:~~

~~(1) 'Borrower' means the member who actually received the proceeds from a loan and shall not include any obligation which he may incur by being an endorser, guarantor, comaker, or similar obligor for another borrower;~~

~~(2) 'Secured loan' means a loan for which adequate collateral is given. A secured loan may include a loan for which there is an endorser, guarantor, comaker, or similar obligor.~~

~~(f) Except as provided in subsection (g) of this Code section, a credit union shall not directly or indirectly make loans or have obligations to any one person or corporation which in aggregate exceed 5 percent of the net worth of the credit union at the time of issuance of a binding commitment unless the entire amount of such loans and obligations is secured by good collateral or other ample security and does not exceed 25 percent of the net worth at the time of issuance of a binding commitment. Except as otherwise indicated in subsection (g) of this Code section, the purchase or discount of agreements for the payment of money or evidences of indebtedness shall be regarded as indirect loans to the person or corporation receiving the proceeds of such transactions. In estimating the legal lending limit for any one person or corporation, loans to related corporations, partnerships, and other entities shall be combined subject to regulations established by the department.~~

~~(g) The limitations of subsection (f) of this Code section shall not apply to:~~

~~(1) Obligations of and obligations guaranteed by:~~

~~(A) The United States;~~

~~(B) The State of Georgia or a public body thereof authorized to levy taxes;~~

~~(C) Any state of the United States or any public body thereof if the obligations or guarantees are general obligations; or~~

(D) Any agency of this state as defined in subparagraph (a)(1)(A) of Code Section 50-14-1;

(2) Obligations to the extent secured by:

(A) Obligations fully guaranteed by the United States;

(B) Guaranties or commitments or agreements to take over or purchase made by any public body of the United States or any corporation owned directly or indirectly by the United States; or

(C) Loan agreements between a local public agency or a public housing agency and an instrumentality of the United States pursuant to national housing legislation under which funds will be provided for payment of the obligations secured by such loan agreements;

(3) Obligations with respect to the sale of federal or correspondent funds to financial institutions having their deposits insured to the same extent as that required of similar institutions chartered in this state; and

(4) A renewal or restructuring of a loan as a new loan or extension of credit following the exercise by the credit union of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limits of this Code section, unless:

(A) New funds are advanced by the credit union to the borrower, except as permitted under this Code section;

(B) A new borrower replaces the original borrower; or

(C) The department determines that a renewal or restructuring was undertaken as a means to evade the credit union's lending limit.

(h) The department may, by regulation not inconsistent with this Code section, prescribe definitions of and requirements for transactions included in or excluded from the indebtedness to which this Code section applies. The department may, by regulation or otherwise, specify that the liabilities of a group of one or more persons or corporations or both shall be considered as owed by one person or corporation for the purposes of this Code section because the borrowers within the group are related through common control or the group meets other criteria established by the department for the combination of indebtedness for legal lending limitation purposes.

~~(f)~~(i) Except as provided in subsection (e) of this Code section, approval Approval of loans by the credit committee shall be evidenced, prior to disbursement of the loan proceeds, by a writing signed by a committee member stating that the committee has approved the loan. If the board appoints loan officers in lieu of a credit committee, it shall establish policies for approval of loans by those loan officers."

SECTION 12.

Said chapter is further amended by revising Code Section 7-1-664, which is reserved, as follows:

"7-1-664.

(a) For purposes of this Code section, the term:

(1) 'Automated teller machine' means electronic equipment which performs routine banking transactions, including, but not limited to, the taking of deposits for the public at locations off premises of a credit union's main or branch office under regulations prescribed by the commissioner. Such term includes electronic equipment that utilizes, or has the capability to utilize, live video chat with offsite credit union personnel capable of assisting with banking services, including, but not limited to, account initiation.

(2) 'Cash dispensing machine' means an automated or electronic terminal which dispenses cash or scrip redeemable for goods and services or for cash, goods, and services; provided, however, that such terminal is not capable of initiating intrabank transactions other than those necessary and incidental to the dispensing of cash.

(3) 'Extension' means a location at which banking activity may occur but which is not a branch or main office.

(4) 'Night depository' means a drop box where customers can make deposits or payments outside of normal banking hours.

(5) 'Point-of-sale terminal' means electronic equipment located in non-credit union business outlets to record electronically credit union transactions occurring as a result of the sale of goods or services.

(b) A credit union location shall be authorized to operate an automated teller machine, cash dispensing machine, night depository, or point-of-sale terminal without prior approval of the department; provided, however, that such extension complies with the requirements of this Code section and any rules and regulations of the department relating to notification.

(c) A credit union may operate an extension as follows:

(1) Any federally insured credit union may operate an automated teller machine at any location in the state;

(2) Any credit union may operate a cash dispensing machine at any location in the state;

(3) Any credit union may operate an automated teller machine or a cash dispensing machine individually or jointly with one or more credit unions;

(4) Any credit union may operate a night depository or point-of-sale terminal at any location in the state;

(5) Any credit union may operate an extension not defined in subsection (a) of this Code section, provided that such extension is located within 200 yards of the boundary lines of a single contiguous area of property owned or leased by the credit union and used as

a credit union location. Prior to the operation of such extension, the credit union shall notify the department in writing; and

(6) All other extensions must be approved by the department prior to the operation of such extension.

(d) This Code section shall not apply to personal communication devices such as telephones, computer terminals, modems, and other similar devices which are not accessible to the general public but are intended for use by a single credit union member. The department may by regulation further define 'automated teller machine,' 'cash dispensing machine,' 'night depository,' 'point-of-sale terminal,' and 'personal communication device' consistent with the objectives set forth in Code Section 7-1-3."

SECTION 13.

Said chapter is further amended by revising Code Section 7-1-665, relating to subsidiary offices, as follows:

"7-1-665.

(a) For purposes of this Code section, the term:

(1) 'Branch office' means any location of a credit union other than the main office where financial services are offered to members.

(2) 'Main office' means the principal location of a credit union as such location appears in the records of the department.

(b) A credit union shall indicate its principal location with the department, and if it fails to do so, the department shall choose a location of such credit union to be the main office and shall so notify such credit union.

(c) A credit union ~~shall not be prohibited from maintaining~~ may maintain offices at locations other than its ~~principal offices~~ main office if the maintenance of such branch offices shall be reasonably necessary to furnish service to its membership. The establishment of ~~additional~~ branch offices shall be subject to the prior approval of the department upon application to it in such form as it may prescribe by regulation. Participation in shared branching networks does not constitute the establishment of ~~additional~~ branch offices under this Code section.

(d) The department shall exercise its discretion in its consideration of an application to establish a branch office; provided, however, that the department shall not approve an application until it has satisfactorily ascertained that a need exists and the establishment of the proposed branch office would be advantageous to members. Such determination may be made upon consideration of the following factors:

(1) Reasonable opportunity for the proposed branch office to generate a sufficient profit;

(2) The character and fitness of the board of directors and management of the credit union to command the confidence of the membership and to warrant the belief that the business of the credit union at the branch office will be honestly and efficiently conducted;

(3) The adequacy of the capital structure of the credit union, particularly in view of the anticipated business to be generated by the proposed branch office; and

(4) The overall financial condition and safety and soundness of the applicant credit union.

Where the department by rule, regulation, or written policy has provided for expedited processing of applications or for notice procedures, it may abbreviate its review of these criteria.

(e) After receipt of a complete application, the department shall have 30 days within which to approve or disapprove such application.

(f) The department may approve an application contingent upon the satisfaction of additional conditions, including the submission of information such as the date of opening and the capital outlay for the branch office. The department may revoke such contingent approval if conditions in the approval have not been satisfied or if other violations of law occur as a result of the branch office's opening or operation.

(g) If the department disapproves an application to establish a branch office, it shall notify the applicant of its disapproval and state generally in writing the unfavorable factors influencing its decision. The decision of the department is final, except that it may be subject to judicial review as provided in Code Section 7-1-90.

(h) The department may provide by regulation that a credit union which meets certain criteria may, in lieu of filing a branch application, file a written notification with the department.

(i) In the event of merger or consolidation of two or more credit unions, the resulting credit union shall indicate its main office with the department and may retain and continue to operate as branch offices any or all credit union locations of the merged institutions which had been approved by the department prior to such merger or consolidation. In the event of the purchase of substantially all of the assets of a credit union, subject to the review and approval by the department of such transaction, the purchasing credit union may retain and continue to operate as branch offices any or all credit union locations of the selling credit union which had been approved by the department prior to such purchase."

SECTION 14.

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

"(c) A bond filed with the department for the purpose of compliance with Code Section 7-1-683.2 shall not be canceled by either the licensee or the corporate surety except upon notice to the department ~~by registered or certified mail, statutory overnight delivery with return receipt requested, or~~ electronically through the Nationwide Multistate Licensing System and Registry, and such cancellation shall be effective no sooner than 30 days after receipt by the department of such notice and only with respect to any breach of condition occurring after the effective date of such cancellation."

SECTION 15.

Said chapter is further amended by revising paragraph (1) of subsection (l) of Code Section 7-1-689, relating to record keeping, investigations and examinations by department, subpoenas, confidentiality, and limitations on civil liability, as follows:

"(1) The name, business address, and telephone, facsimile, and ~~license numbers~~ unique identifier of a licensee;"

SECTION 16.

Said chapter is further amended by revising paragraph (3) of subsection (a) of Code Section 7-1-694, relating to cease and desist orders from unauthorized activities, civil penalties for violations, judicial review, and administrative fines, as follows:

"(3) A person licensed under this article has received a notice of bond cancellation under Code Section 7-1-687, which such cease and desist order shall be final ~~30~~ 20 days from the date of issuance, and there shall be no opportunity for an administrative hearing. In the event the cease and desist order becomes final, the license shall expire, and if a new license is desired, the licensee shall be required to make a new application for a license and pay all applicable fees as if it had never been licensed. If the required surety bond is reinstated or replaced and such documentation is delivered to the department within the ~~30~~ 20 day period following the date of issuance of the order, the order shall be rescinded."

SECTION 17.

Said chapter is further amended by revising paragraph (1) of subsection (l) of Code Section 7-1-706, relating to record keeping obligations, investigations and examinations by the department, examination fees, administration of oaths and issuing of subpoenas, confidentiality, and civil liability, as follows:

522 "(1) The name, business address, and telephone, facsimile, and ~~license numbers~~ unique
523 identifier of a licensee;"

524 **SECTION 18.**

525 Said chapter is further amended by repealing and reserving Code Section 7-1-1003.1, relating
526 to physical place of business, as follows:

527 "7-1-1003.1.

528 ~~If the applicant for a mortgage broker license or a renewal of such license does not have~~
529 ~~a physical place of business in Georgia, a license or renewal shall only be issued if the~~
530 ~~applicant's home state does not require that in order to be licensed a mortgage broker shall~~
531 ~~have a physical place of business in such home state. In either case, an applicant shall have~~
532 ~~a registered agent and a registered office in this state. Reserved.~~"

533 **SECTION 19.**

534 Said chapter is further amended by revising subsection (e) of Code Section 7-1-1006, relating
535 to contents of license, posting of license, transferring of license, transacting business under
536 other name, change of address, opening a new additional office without prior approval, and
537 approval of branch manager, as follows:

538 "(e) For mortgage brokers and mortgage lenders, each licensee shall notify the department
539 in writing of any change in the address of the principal place of business or of any
540 additional location of business in Georgia, any change in registered agent or registered
541 office, any change of executive officer; or contact person for consumer complaints, ~~or~~
542 ~~ultimate equitable owner of 10 percent or more of any corporation or other entity licensed~~
543 ~~under this article~~, or of any material change in the licensee's financial statement. Notice
544 of changes shall be received by the department no later than 30 business days after the
545 change is effective."

546 **SECTION 20.**

547 Said chapter is further amended by revising subsection (c) of Code Section 7-1-1007, relating
548 to licensee to give notice of certain actions brought against it by a creditor or borrower and
549 notice to the department of cancellation of bond, as follows:

550 "(c) A bond filed with the department for the purpose of compliance with Code Section
551 7-1-1003.2 or 7-1-1004 shall not be canceled by either the mortgage loan originator,
552 mortgage broker, or mortgage lender or the corporate surety except upon notice to the
553 department ~~by registered or certified mail, statutory overnight delivery with return receipt~~
554 ~~requested~~, or electronically through the Nationwide Multistate Licensing System and
555 Registry, the cancellation to be effective not less than 30 days after receipt by the

556 department of such notice and only with respect to any breach of condition occurring after
 557 the effective date of such cancellation."

558 **SECTION 21.**

559 Said chapter is further amended by revising paragraph (1) of subsection (g) of Code Section
 560 7-1-1009, relating to maintenance of books, accounts, and records, investigation and
 561 examination of licensees and registrants by department, confidentiality, and exemptions from
 562 civil liability, as follows:

563 "(1) For mortgage brokers and mortgage lenders, the name, business address, and
 564 telephone, facsimile, and ~~license numbers~~ unique identifier of a licensee or registrant;"

565 **SECTION 22.**

566 Said chapter is further amended by revising Code Section 7-1-1016, relating to regulations
 567 relative to advertising, as follows:

568 "7-1-1016.

569 In addition to such other rules, regulations, and policies as the department may promulgate
 570 to effectuate the purpose of this article, the department shall prescribe regulations
 571 governing the advertising of mortgage loans, including, without limitation, the following
 572 requirements:

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

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

584 (2) All advertisements, including websites, disseminated by a licensee or a registrant in
 585 this state by any means shall contain the name, ~~license number, Nation-wide Multistate~~
 586 ~~Licensing System and Registry~~ which shall conform to a name on record with the
 587 department, and unique identifier, and an office address of such licensee or registrant,
 588 ~~which shall conform to a name and address on record with the department, and which~~
 589 shall clearly indicate that the number was issued by the Nationwide Multistate Licensing
 590 System and Registry, of the licensee or registrant.

~~(3) No mortgage broker or mortgage lender licensee shall advertise its services in Georgia in any media disseminated in this state, whether print or electronic, without the words 'Georgia Residential Mortgage Licensee' or, for those advertisers licensed in more than one state, a listing of Georgia as a state in which the advertiser is licensed."~~

SECTION 23.

Said chapter is further amended by revising subsection (a) of Code Section 7-1-1018, relating to cease and desist orders, enforcement procedure, civil penalty, and fines, as follows:

"(a) Whenever it shall appear to the department that any person required to be licensed or registered under this article or employed by a licensee or who would be covered by the prohibitions in Code Section 7-1-1013 has violated any law of this state or any order or regulation of the department, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices. Such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request within such 20 day period for a hearing. The hearing shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' A cease and desist order to an unlicensed person that orders such person to cease doing a mortgage business without the appropriate license shall be final 30 days from the date of issuance, and there shall be no opportunity for an administrative hearing. If the proper license or evidence of exemption or valid employment status during the time of the alleged offense is delivered to the department within the 30 day period, the order shall be rescinded by the department. If a cease and desist order is issued to a person who has been sent a notice of bond cancellation and if the bond is reinstated or replaced and such documentation is delivered to the department within the ~~30~~ 20 day period following the date of issuance of the order, the order shall be rescinded. If the notice of reinstatement of the bond is not received within the ~~30~~ 20 days, the license shall expire at the end of the ~~30~~ 20 day period, and the person shall be required to make a new application for license and pay the applicable fees. In the case of an unlawful purchase of mortgage loans, such initial cease and desist order to a purchaser shall constitute the knowledge required under subsection (b) of Code Section 7-1-1002 for any subsequent violations. Any cease and desist order sent to the person at both his or her personal and business addresses pursuant to this Code section that is returned to the department as 'refused' or 'unclaimed' shall be deemed as received and sufficiently served."

SECTION 24.

Chapter 6A of Title 7 of the Official Code of Georgia Annotated, relating to the Georgia Fair Lending Act, is amended by revising paragraphs (12), (15), (16), (17), and (18) of Code Section 7-6A-2, relating to definitions, as follows:

"(12) 'Points and fees' means:

(A) All items included in the definition of finance charge in 12 C.F.R. ~~226.4(a)~~ 1026.4(a) and 12 C.F.R. ~~226.4(b)~~ 1026.4(b) except interest or the time price differential. All items excluded under 12 C.F.R. ~~226.4(c)~~ 1026.4(c) are excluded from points and fees, provided that for items under 12 C.F.R. ~~226.4(c)(7)~~ 1026.4(c)(7) the creditor does not receive direct or indirect compensation in connection with the charge and the charge is not paid to an affiliate of the creditor;

(B) All compensation paid directly or indirectly to a mortgage broker from any source, including a broker that originates a loan in its own name in a table funded transaction, including but not limited to yield spread premiums, yield differentials, and service release fees, provided that the portion of any yield spread premium that is both disclosed to the borrower in writing and used to pay bona fide and reasonable fees to a person other than the creditor or an affiliate of the creditor for the following purposes is exempt from inclusion in points and fees: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspection performed prior to closing; credit reports; surveys; attorneys' fees, if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included under subparagraph (A) of this paragraph; title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions set forth in 12 C.F.R. ~~226.4(d)(2)~~ 1026.4(d)(2) are met;

(C) Premiums or other charges for credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance, debt suspension coverage or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a home loan and premiums or other charges for life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance. In determining points and fees for the purposes of this paragraph, premiums or other charges shall only include those payable at or before loan closing and are included whether they are paid in cash or financed and whether the amount represents the entire premium for the coverage or an initial payment;

(D) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents. Mortgage interest that may accrue in advance of payment in full of a loan made under a local, state, or federal government sponsored mortgage insurance or guaranty program, including a Federal Housing Administration program, shall not be considered to be a prepayment fee or penalty;

(E) All prepayment fees or penalties that are charged to the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor;

(F) For open-end loans, points and fees are calculated in the same manner as for loans other than open-end loans, based on the minimum points and fees that a borrower would be required to pay in order to draw on the open-end loan an amount equal to the total credit line; and

(G) Points and fees shall not include:

(i) Taxes, filing fees, recording, and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest;

(ii) Bona fide and reasonable fees paid to a person other than the creditor or an affiliate of the creditor for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees, if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included under subparagraph (A) of this paragraph; title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions in 12 C.F.R. ~~226.4(d)(2)~~ 1026.4(d)(2) are met;

(iii) Bona fide fees paid to a federal or state government agency that insures payment of some portion of a home loan, including, but not limited to, the Federal Housing Administration, the Department of Veterans Affairs, the United States Department of Agriculture for rural development loans, or the Georgia Housing and Finance Authority; and

(iv) Notwithstanding any provision to the contrary in this chapter, compensation in the form of premiums, commissions, or similar charges paid to a creditor or any affiliate of a creditor for the sale of: (I) title insurance; or (II) insurance against loss of or damage to property or against liability arising out of the ownership or use of property, provided that the conditions in 12 C.F.R. ~~226.4(d)(2)~~ 1026.4(d)(2) are met."

"(15) 'Servicer' means the same as set forth in ~~24 C.F.R.~~ 12 U.S.C. Section 3500.2.

(16) 'Servicing' means the same as set forth in ~~24 C.F.R.~~ 12 U.S.C. Section 3500.2.

696 (17) 'Threshold' means:

697 (A) Without regard to whether the loan transaction is or may be a 'residential mortgage
698 transaction' as that term is defined in 12 C.F.R. ~~226.2(a)(24)~~ 1026.2(a)(24), the annual
699 percentage rate of the loan is such that it equals or exceeds that set out in Section 152
700 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. Section
701 1602(aa), and the regulations adopted pursuant thereto by the Federal Reserve Board,
702 including Section 12 C.F.R. ~~226.32~~ 1026.32; or

703 (B) The total points and fees payable in connection with the loan, excluding not more
704 than two bona fide discount points, exceed: (i) 5 percent of the total loan amount if the
705 total loan amount is \$20,000.00 or more or (ii) the lesser of 8 percent of the total loan
706 amount or \$1,000.00 if the total loan amount is less than \$20,000.00.

707 (18) 'Total loan amount' means the amount calculated as set forth in 12 C.F.R. ~~226.32(a)~~
708 1026.32(a) and under the Official Staff Commentary of the Board of Governors of the
709 Federal Reserve System. For open-end loans, the total loan amount shall be calculated
710 using the total credit line available under the terms of the home loan as the amount
711 financed."

712 **SECTION 25.**

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