

House Bill 780 (AS PASSED HOUSE AND SENATE)

By: Representative Williamson of the 115th

**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 provide for numerous changes to provisions applicable to the
3 Department of Banking and Finance and financial institutions generally, banks and trust
4 companies, credit unions, licensed sellers of payment instruments, those licensed to cash
5 payment instruments, and mortgage lenders and mortgage brokers; to provide for power of
6 the commissioner to issue orders relative to state chartered financial institutions to exercise
7 rights and powers authorized by federal law but not authorized under state law; to provide
8 for delivery method of required notices; to provide for the removal of officers, directors, or
9 employees of financial institutions by the department; to provide for powers of banks; to
10 provide for financial structure, management, merger, consolidations, and interstate
11 acquisitions of banks and trust companies; to provide for a process by which state chartered
12 banks and credit unions may exercise rights and powers authorized solely under federal law;
13 to provide for operation and regulation of credit unions; to provide for the sale of payment
14 instruments; to provide for the cashing of payment instruments; to provide for the licensing
15 of mortgage lenders and mortgage brokers; to provide for related matters; to provide for an
16 effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

17 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

18 **SECTION 1.**

19 Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial
20 institutions, is amended in Code Section 7-1-6, relating to notices and waivers of notices, by
21 revising paragraph (1) as follows:

22 "(1) Any notice required to be given under this chapter may be delivered in person or by
23 first-class mail or statutory overnight delivery to the last known address of the person or
24 corporation or to the registered office of the corporation. If the notice is sent by
25 first-class mail or statutory overnight delivery, it shall be deemed to have been given

26 when deposited in the United States mail or with a commercial firm regularly engaged
27 in the business of document delivery;"

SECTION 2.

29 Said chapter is further amended in Code Section 7-1-61.1, relating to expansion of power for
30 banks and credit unions and role of commissioner, by revising subsection (b) and adding a
31 new subsection to read as follows:

32 "(b) To provide parity with financial institutions whose deposits are federally insured, the
33 commissioner may, by specific order directed to ~~an individual bank or credit union or a~~
34 category of banks or credit unions, grant any power conferred upon a financial institution,
35 subject to the supervision of the federal government, to:

36 (1) State chartered banks and credit unions to enable such banks and credit unions to
37 compete; and

38 (2) Subsidiaries of state chartered banks and credit unions to the same extent powers are
39 granted to subsidiaries of national banks or federal credit unions to enable such
40 subsidiaries of state chartered banks and credit unions to compete."

41 "(d) No later than ten days after the issuance of any order by the commissioner pursuant
42 to this Code section, the commissioner shall provide a copy of such order to the
43 chairpersons of the House Committee on Banks and Banking and Senate Banking and
44 Financial Institutions Committee."

SECTION 3.

46 Said chapter is further amended in Code Section 7-1-71, relating to removal of officers,
47 directors, or employees, by revising subsection (b) as follows:

48 "(b) A prohibition order, which prohibits an individual from participating in any capacity
49 in the affairs of a financial institution, may be issued by the commissioner in connection
50 with a suspension order issued under the authority of this Code section. Such prohibition
51 order may provide that if an officer, director, or employee has been removed from office
52 temporarily or permanently at a financial institution, he or she may also be prohibited from
53 participating in any manner in the conduct of the affairs of any financial institution or any
54 financial institution's affiliate regulated by the department during the time the prohibition
55 order is in effect."

SECTION 4.

57 Said chapter is further amended in Code Section 7-1-243, relating to restrictions on banking
58 and trust nomenclature, by revising subsection (a.1) as follows:

59 "(a.1) Except as provided in subsection (c) of this Code section, no person or corporation
60 except a credit union or a federal credit union or a subsidiary of such credit union or federal
61 credit union shall use the words 'credit union,' or any other similar name indicating that the
62 business done is that of a credit union upon any sign at its place of business or elsewhere,
63 or upon any of its letterheads, billheads, blank checks, blank notes, receipts, certificates,
64 circulars, advertisements, or any other written or printed matter."

SECTION 5.

66 Said chapter is further amended in Code Section 7-1-285, relating to limits on obligations of
67 one person or corporation, by revising paragraph (1) of subsection (c) as follows:

68 "(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; or
 - (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:"

SECTION 6.

76 Said chapter is further amended by adding a new Code section to read as follows:

77 "7-1-296.

(a) For purposes of this Code section, the term 'federal power' means any banking or corporate power, right, benefit, privilege, or immunity of a national bank, the deposits of which are federally insured, that may be exercised by a national bank doing business in this state pursuant to the National Bank Act, 12 U.S.C. Section 1, et seq.; any other federal statute; or any regulation, ruling, circular, bulletin, order, or interpretation issued by the Office of the Comptroller of the Currency. Such term shall include only the provisions set forth above which were effective on January 1, 2018.

(b) Notwithstanding any other provisions of law, a bank may exercise any federal power while a national bank may also exercise such power subject to the same limitations and restrictions as are applicable to national banks, provided that the requirements of subsection (d) of this Code section have been satisfied. Nothing in this subsection shall be construed as authorizing a bank chartered by this state to exercise a federal power prior to compliance with subsection (d) of this Code section.

91 (c) Notwithstanding any other provisions of law, to the extent the National Bank Act, 12
92 U.S.C. Section 1, et seq., or any other federal law or regulation in effect on
93 January 1, 2018, precludes or preempts or has been determined to preclude or preempt the

94 application of any provision of law, rule, or regulation of this state, as to any national bank
95 doing business in this state, a bank may also exercise such power authorized by the
96 preclusion or preemption subject to the same limitations and restrictions as are applicable
97 to a national bank, provided that the requirements of subsection (d) of this Code section
98 have been satisfied. Nothing in this subsection shall be construed as authorizing a bank
99 chartered by this state to exercise a federal power prior to compliance with subsection (d)
100 of this Code section.

101 (d) In furtherance of the commissioner's statutory duties to regulate, supervise, and
102 examine, a bank shall notify the commissioner in writing by certified or registered mail
103 that, pursuant to subsection (b) or (c) of this Code section, it intends to exercise a federal
104 power or to avail itself of any federal preclusion or preemption of any provision of law,
105 rule, or regulation of this state. Such notice shall include the specific federal authorization
106 of the activity to be utilized, the proposed action to be undertaken by the bank,
107 documentation indicating that the bank satisfies the prescribed federal standards, if any, to
108 engage in the activity, and such other information as may be required by the department.
109 Upon receipt of such notice, the commissioner shall determine whether the exercise of any
110 federal power or the availing of any federal preclusion or preemption, or any part thereof,
111 by the bank is inconsistent with the purposes of this chapter or presents undue risk to the
112 safety and soundness of the banking system. In making such a determination, the
113 commissioner shall consider the financial condition of the bank, the regulatory safety and
114 soundness ratings of the bank, the ability of bank management to administer and supervise
115 the activity, and the overall impact on the safety and soundness to all other state chartered
116 banks. Based on such a determination, the commissioner may object to the exercise of the
117 federal power, in whole or in part, or to the federal preclusion or preemption of the law,
118 rule, or regulation of this state, in whole or in part, including objecting to a level or quantity
119 above which a bank may be seeking to exercise a federal power or availing itself of any
120 federal preclusion or preemption of law, rule, or regulation of this state. If the
121 commissioner so objects, the commissioner shall deliver such objection in writing by
122 certified or registered mail to the bank within 45 days of receipt of the notice; provided,
123 however, that the commissioner may extend such period of review for an additional 45
124 days by providing the bank with written notice of such extension prior to the expiration of
125 the initial notice period. If the commissioner sends such an objection, the federal power,
126 preclusion, or preemption, or the part thereof, objected to by the commissioner shall not
127 be exercised by the bank pursuant to subsections (b) and (c) of this Code section. The
128 objection by the commissioner of a bank's intent to exercise a federal power or avail itself
129 of any federal preclusion or preemption shall not preclude such bank from providing notice
130 to the department of its intent to exercise the same federal power or to avail itself of the

131 same federal preclusion or preemption at a later date; provided, however, that the
132 requirements of this subsection shall be applicable for any such additional notice. Further,
133 in the event a bank determines, after satisfying the notice provisions of this subsection, that
134 it no longer wishes to exercise a federal power or avail itself of any federal preclusion or
135 preemption, then such bank shall provide written notice of such fact to the commissioner
136 by certified or registered mail.

137 (e) Notwithstanding the provisions of Code Section 7-1-70, the department shall publish
138 information stating the federal powers that are being exercised or federal preemptions or
139 preclusions that are being utilized by each bank. All other information related to the notices
140 or objections provided under subsection (d) of this Code section are governed by Code
141 Section 7-1-70.

142 (f) Notwithstanding any other provisions of law, a bank may exercise any power that was
143 granted through an order or ruling declared by the commissioner on or before January 1,
144 2018, pursuant to the current or former provisions of Code Section 7-1-61, 7-1-61.1, or
145 7-6A-12 and which has not been rescinded or withdrawn.

(g) Any federal power or activity authorized and exercised or conducted pursuant to this Code section shall be independent from, and in addition to, any other powers granted to banks under applicable laws of this state or rules or regulations promulgated thereunder. The express and incidental powers granted to banks under the Official Code of Georgia Annotated are not limited or otherwise restricted by this Code section.

151 (h) Nothing in this Code section shall be construed as limiting the commissioner's
152 authority conferred by this chapter, including the powers granted under Code Sections
153 7-1-61 and 7-1-61.1.

154 (i) Nothing in this Code section shall be construed as authorizing the imposition of interest
155 rates by a bank in excess of those authorized by Chapter 4 of this title nor shall any
156 provision of this Code section be construed as permitting a bank to make loans in violation
157 of Chapter 17 of Title 16."

SECTION 7.

159 Said chapter is further amended in Code Section 7-1-414, relating to purchase, redemption,
160 and convertibility of shares and debt securities, by revising subsection (c) as follows:

161 "c) With the written approval of the department; and a resolution of the board of directors,
162 ~~and a two-thirds' affirmative vote of the shares entitled to vote;~~ a bank or trust company
163 may acquire issued shares of its own common stock, which will then be considered treasury
164 shares. The department shall consider whether the acquisition has a legitimate corporate
165 purpose, whether any capital impairment would result, and whether the price of the shares
166 reflects fair market value."

167

SECTION 8.

168 Said chapter is further amended in Code Section 7-1-484, relating to oath of directors of
169 banks and trust companies and liability of persons who have not subscribed to such oath, by
170 adding a new subsection to read as follows:

171 "(c) The oath shall not modify in any manner the legal duties of or the standard of care for
172 directors in the exercise of such duties."

173

SECTION 9.

174 Said chapter is further amended in Code Section 7-1-493, relating to actions against directors
175 and officers of banks and trust companies, by revising subsections (a) and (e) as follows:

176 "(a) An action may be brought by any of the persons named in subsection (b) of this Code
177 section against one or more directors or officers of a bank or trust company to procure for
178 the benefit of the bank or trust company a judgment for the following relief:

179 (1) To compel the defendant to account for his or her official conduct, or to decree any
180 other relief called for by his or her official conduct, in the following cases:

181 (A) The neglect of, failure to perform, or other violation of his or her duties in the
182 management of the bank or trust company or in the disposition of corporate assets
183 committed to his or her charge;

184 (B) The acquisition by himself or herself, transfer to others, loss, or waste of corporate
185 assets due to any neglect of, failure to perform, or other violation of his or her duties;

186 (C) The appropriation, in violation of his or her duties, of any business opportunity of
187 the bank or trust company;

188 (2) To enjoin a proposed unlawful conveyance, assignment, or transfer of corporate
189 assets or other unlawful corporate transaction, where there is sufficient evidence that it
190 will be made;

191 (3) To set aside an unlawful conveyance, assignment, or transfer of corporate assets,
192 where the transferee knew of its unlawfulness and is made a party to the action."

193 "(e) Notwithstanding the foregoing, a bank or trust company may provide ~~through and~~
194 ~~amendment to~~ ~~in~~ its articles of incorporation for the elimination or limitation of the
195 personal liability of a director to the bank or trust company or its shareholders of the bank
196 ~~or trust company~~ to the same extent as a business corporation incorporated under the
197 provisions of Chapter 2 of Title 14, ~~provided that such an amendment to the articles of~~
198 ~~incorporation must be adopted by the affirmative vote of two-thirds of the total shares~~
199 ~~outstanding.~~"

SECTION 10.

Said chapter is further amended in Code Section 7-1-531, relating to requirements for merger, share exchange, or consolidation plan of state banks and trust companies and modification of plan, by revising paragraphs (2) and (3) of subsection (a) as follows:

"(2) Adoption of the plan by each party thereto shall require the affirmative vote of at least:

(A) A majority of the directors; and

(B) Unless the article or bylaws require a greater vote, the ~~The~~ shareholders entitled to cast ~~two-thirds~~ a majority of the votes which all shareholders are entitled to cast thereon and, if any class of shares is entitled to vote thereon as a class, the holders of ~~at least two-thirds~~ a majority of the outstanding shares of such class, at a meeting of shareholders; provided, however, that approval from the shareholders of the surviving bank or trust company is not required if the conditions set forth in subsection (h) of Code Section 14-2-1103 are satisfied.

(3) Whenever a meeting of shareholders is called for the purpose of taking action on a plan, the notice for such meeting ~~The notice~~ shall include a copy or summary of the plan and a full statement of the rights and remedies of dissenting shareholders, the method of exercising them, and the limitations on such rights and remedies."

SECTION 11.

Said chapter is further amended in Code Section 7-1-590, relating to definitions relative to representative offices and registration of banks and trust companies, by revising paragraph (4) as follows:

"(4) 'Representative office' is an office established by a bank, a bank holding company, or an agent or subsidiary of either for the purpose of conducting business activities other than a banking business. It shall not be considered to be a branch office or main office."

SECTION 12.

Said chapter is further amended in Code Section 7-1-625, relating to provisions applicable to, and qualifications of, bank holding companies in this state, reciprocal agreements, and confidentiality reports, by revising subsection (b) as follows:

"(b) Any bank holding company that has a bank subsidiary with banking offices in Georgia that is not otherwise organized under the laws of this state or qualified to do business in this state shall qualify to do business in this state as a foreign corporation ~~and shall advise the department of the location of its initial registered office within this state and the name of its initial registered agent at such location.~~ Such bank holding company shall agree to be bound by all the provisions of Code Sections 7-1-605 through 7-1-612 and by the

235 provisions of this part. Any bank holding company having a Georgia bank subsidiary shall
236 promptly advise the department of any changes in its registered office and agent."

237 **SECTION 13.**

238 Said chapter is further amended in Code Section 7-1-650, relating to powers of credit unions,
239 by revising paragraphs (11) and (12) and adding a new paragraph to read as follows:

240 "(11) Dispose of property held pursuant to paragraphs (9) and (10) of this subsection
241 through financing by the credit union without the advance of additional funds irrespective
242 of the purchasers' membership in the credit union and of ordinarily applicable collateral
243 margin requirements; and

244 (12) Provide, through an amendment to its bylaws in its articles of incorporation
245 approved by two-thirds a majority of its membership present and voting, for the
246 elimination or limitation of personal liability of a director to the credit union or its
247 members in their capacity as shareholders of the credit union to the same extent as a bank
248 or trust company operating under the provisions of this chapter; and

249 (13) Subject to any rules and regulations enacted by the department and in compliance
250 with federal law and applicable provisions regarding insurable interests in Chapter 24 of
251 Title 33, purchase, hold, or fund insurance on the life of any of its directors, officers, or
252 employees, or any other person whose death might cause financial loss to the credit
253 union, or, pursuant to any contract lawfully obligating the credit union as guarantor or
254 surety, on the life of the principal obligor."

255 **SECTION 14.**

256 Said chapter is further amended in Code Section 7-1-655, relating to a credit union's board
257 of directors, credit and supervisory committees, officers, oaths of officials, removal from
258 office, suspension of member, filling of vacancies, notification to department of change in
259 president or chief executive officer, by revising subsection (f) as follows:

260 "(f) All members of the board and all officers and committee members shall be sworn to
261 perform faithfully the duties of their several offices in accordance with this chapter and the
262 bylaws or as otherwise lawfully established. The oaths shall be subscribed in writing and
263 a copy thereof shall be retained in the minutes of the meetings of the board. The oaths shall
264 not modify in any manner the legal duties of or the standard of care for members and
265 officers in the exercise of such duties."

266

SECTION 15.

267 Said chapter is further amended in Code Section 7-1-656, relating to duties of directors of
268 credit unions, meetings, prohibited activities, eligibility to vote, and applicability of Code
269 Section 7-1-490, by adding a new subsection to read as follows:

270 "(f) The board of directors may appoint an individual as an honorary director or director
271 emeritus or member of an advisory board. An individual so appointed may be
272 compensated but shall not vote at any meeting of the board of directors or be counted in
273 determining a quorum and shall not have any responsibility for or be subject to any liability
274 imposed upon a director or otherwise be deemed a director."

275

SECTION 16.

276 Said chapter is further amended in Code Section 7-1-658, relating to loans of a credit union,
277 by revising subsection (c) as follows:

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

285

SECTION 17.

286 Said chapter is further amended by adding a new Code section to read as follows:

287 "7-1-671.

288 (a) For purposes of this Code section, the term 'federal power' means any banking or
289 corporate power, right, benefit, privilege, or immunity of a federal credit union, the
290 deposits of which are federally insured, that may be exercised by a federal credit union
291 doing business in this state pursuant to the Federal Credit Union Act, 12 U.S.C.
292 Section 1751, et seq.; any other federal statute; or any regulation, ruling, circular, bulletin,
293 order, or interpretation issued by the National Credit Union Administration. Such term
294 shall include only the provisions set forth above which were effective on January 1, 2018.

295 (b) Notwithstanding any other provisions of law, a credit union may exercise any federal
296 power while a federal credit union may also exercise such power subject to the same
297 limitations and restrictions as are applicable to federal credit unions, provided that the
298 requirements of subsection (d) of this Code section have been satisfied. Nothing in this
299 subsection shall be construed as authorizing a credit union incorporated or organized in this

300 state to exercise a federal power prior to compliance with subsection (d) of this Code
301 section.

302 (c) Notwithstanding any other provisions of law, to the extent the Federal Credit Union
303 Act, 12 U.S.C. Section 1751, et seq., or any other federal law or regulation in effect on
304 January 1, 2018, precludes or preempts or has been determined to preclude or preempt the
305 application of any provision of law, rule, or regulation of this state as to any federal credit
306 union doing business in this state, a credit union may also exercise such power authorized
307 by the preclusion or preemption subject to the same limitations and restrictions as are
308 applicable to a federal credit union, provided that the requirements of subsection (d) of this
309 Code section have been satisfied. Nothing in this subsection shall be construed as
310 authorizing a credit union incorporated or organized in this state to exercise a federal power
311 prior to compliance with subsection (d) of this Code section.

312 (d) In furtherance of the commissioner's statutory duties to regulate, supervise, and
313 examine, a credit union shall notify the commissioner in writing by certified or registered
314 mail that, pursuant to subsection (b) or (c) of this Code section, it intends to exercise a
315 federal power or to avail itself of any federal preclusion or preemption of any provision of
316 law, rule, or regulation of this state. Such notice shall include the specific federal
317 authorization of the activity to be utilized, the proposed action to be undertaken by the
318 credit union, documentation indicating that the credit union satisfies the prescribed federal
319 standards, if any, to engage in the activity, and such other information as may be required
320 by the department. Upon receipt of such notice, the commissioner shall determine whether
321 the exercise of any federal power or the availing of any federal preclusion or preemption,
322 or any part thereof, by the credit union is inconsistent with the purposes of this chapter or
323 presents undue risk to the safety and soundness of the banking system. In making such a
324 determination, the commissioner shall consider the financial condition of the credit union,
325 the regulatory safety and soundness ratings of the credit union, the ability of credit union
326 management to administer and supervise the activity, and the overall impact on the safety
327 and soundness to all other state chartered credit unions. Based on such a determination,
328 the commissioner may object to the exercise of the federal power, in whole or in part, or
329 to the federal preclusion or preemption of the law, rule, or regulation of this state, in whole
330 or in part, including objecting to a level or quantity above which a credit union may be
331 seeking to exercise a federal power or availing itself of any federal preclusion or
332 preemption of law, rule, or regulation of this state. If the commissioner so objects, the
333 commissioner shall deliver such objection in writing by certified or registered mail to the
334 credit union within 45 days of receipt of the notice; provided, however, that the
335 commissioner may extend such period of review for an additional 45 days by providing the
336 credit union with written notice of such extension prior to the expiration of the initial notice

337 period. If the commissioner sends such an objection, the federal power, preclusion, or
338 preemption, or the part thereof, objected to by the commissioner shall not be exercised by
339 the credit union pursuant to subsections (b) and (c) of this Code section. The objection by
340 the commissioner of a credit union's intent to exercise a federal power or avail itself of any
341 federal preclusion or preemption shall not preclude such credit union from providing notice
342 to the department of its intent to exercise the same federal power or to avail itself of the
343 same federal preclusion or preemption at a later date; provided, however, that the
344 requirements of this subsection shall be applicable for any such additional notice. Further,
345 in the event a credit union determines, after satisfying the notice provisions of this
346 subsection, that it no longer wishes to exercise a federal power or avail itself of any federal
347 preclusion or preemption, then such credit union shall provide written notice of such fact
348 to the commissioner by certified or registered mail.

349 (e) Notwithstanding the provisions of Code Section 7-1-70, the department shall publish
350 information stating the federal powers that are being exercised or federal preclusions or
351 preemptions that are being utilized by each credit union. All other information related to
352 the notices or objections provided under subsection (d) of this Code section are governed
353 by Code Section 7-1-70.

354 (f) Notwithstanding any other provisions of law, a credit union may exercise any power
355 that was granted through an order or ruling declared by the commissioner on or before
356 January 1, 2018, pursuant to the current or former provisions of Code Section 7-1-61,
357 7-1-61.1, or 7-6A-12 and which has not been rescinded or withdrawn.

358 (g) Any federal power or activity authorized and exercised or conducted pursuant to this
359 Code section shall be independent from, and in addition to, any other powers granted to
360 credit unions under applicable laws of this state or rules or regulations promulgated
361 thereunder. The express and incidental powers granted to credit unions under the Official
362 Code of Georgia Annotated are not limited or otherwise restricted by this Code section.

363 (h) Nothing in this Code section shall be construed as limiting the commissioner's
364 authority conferred by this chapter, including the powers granted under Code Sections
365 7-1-61 and 7-1-61.1.

366 (i) Nothing in this Code section shall be construed as authorizing the imposition of interest
367 rates by a credit union in excess of those authorized by Chapter 4 of this title nor shall any
368 provision of this Code section be construed as permitting a credit union to make loans in
369 violation of Chapter 17 of Title 16."

370

SECTION 18.

371 Said chapter is further amended in Code Section 7-1-687, relating to notice of action against
372 licensee by creditor or claimant and other notification requirements relative to the sale of
373 payment instruments, by revising subsection (a) and adding a new subsection to read as
374 follows:

375 "(a) A licensee shall give written notice to the department by registered or certified mail
376 of any action which may be brought against it by any creditor or claimant where such
377 action relates to the activities authorized under this article or involves a claim against the
378 bond filed with the department under Code Section 7-1-683.2. The notice shall provide
379 details sufficient to identify the action and shall be sent within 30 days after the
380 commencement of any such action. The licensee shall also give notice to the department
381 by registered or certified mail within 30 days of the entry of any judgment ~~which may be~~
382 entered against the licensee."

383 "(e) Unless prior approval of a change in executive officer is required under Code
384 Section 7-1-688 and notwithstanding subsection (e) of Code Section 7-1-684 requiring a
385 criminal background check prior to the initial date of hire, a licensee shall notify the
386 department in writing of any change of executive officer in such a manner that the notice
387 is received by the department no later than ten business days after the effective date of the
388 change. In the event of such change, the licensee shall initiate a criminal background check
389 no later than ten business days after the effective date of the change."

390

SECTION 19.

391 Said chapter is further amended by revising Code Section 7-1-688, relating to approval
392 required of new ultimate equitable owner, other change of control, or executive officer of
393 licensee and denial of application relative to sellers of payment instruments, as follows:

394 "7-1-688.

395 (a) Except as provided in this Code section, no person shall become an ultimate equitable
396 owner of any licensee through acquisition or other change in control or become an
397 executive officer of a licensee as a result of such acquisition or other change in control
398 unless the person has first received written approval for such acquisition, change in control,
399 or designation as an executive officer from the department. In order to obtain such
400 approval, such person shall:

- 401 (1) File an application with the department in such form as the department may prescribe
402 from time to time;
- 403 (2) Provide such other information as the department may require concerning the
404 financial responsibility, background, experience, and activities of the applicant, its
405 directors and executive officers, if a corporation, and its members, if applicable, and of

406 any proposed new directors, executive officers, members, or ultimate equitable owners
407 of the licensee; and
408 (3) Pay such application fee as the department may prescribe.
409 (b) The department may prescribe additional requirements for approval of such
410 acquisition, change in control, or designation as an executive officer as a result of such
411 acquisition or other change in control through rules and regulations.
412 (c) If the application is denied, the department shall notify the applicant of the denial and
413 the reasons for the denial."

414 **SECTION 20.**

415 Said chapter is further amended in Code Section 7-1-689, relating to record-keeping
416 requirements, investigations and examinations by department, department subpoena power,
417 confidentiality requirements, and limitations on civil liability relative to sellers of payment
418 instruments, by revising subsection (l) as follows:

419 "(l) Examinations and investigations conducted under this article and information obtained
420 by the department in the course of its duties under this article are confidential, except as
421 provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition
422 to the exceptions set forth in subsection (b) of Code Section 7-1-70, the department is
423 authorized to share information obtained under this article with other state and federal
424 regulatory agencies or law enforcement authorities. In the case of such sharing, the
425 safeguards to confidentiality already in place within such agencies or authorities shall be
426 deemed adequate. The commissioner or an examiner specifically designated may disclose
427 such information as is necessary to conduct a civil or administrative investigation or
428 proceeding. Information contained in the records of the department that is not confidential
429 and may be made available to the public either on the department's website, or upon receipt
430 by the department of a written request, or in the Nation-wide Multistate Licensing System
431 and Registry shall include:

- 432 (1) The name, business address, and telephone, facsimile, and license numbers of a
433 licensee;
434 (2) The names and titles of the principal officers;
435 (3) The name of the owner or owners thereof;
436 (4) The business address of a licensee's registered agent for service;
437 (5) The name, business address, telephone number, and facsimile number of all locations
438 of a licensee;
439 (6) The name, business address, telephone number, and facsimile number of all
440 authorized agents;
441 (7) The terms of or a copy of any bond filed by a licensee;

- 442 (8) Information concerning any violation of this article, any rule or regulation, or order
443 issued under this article, provided that the information is derived from a final order of the
444 department; and
445 (9) Imposition of an administrative fine or penalty under this article."

446 **SECTION 21.**

447 Said chapter is further amended in Code Section 7-1-705, relating to written notice of claims
448 against licensee for cashing of payment instruments, judgments, or other misconduct by
449 employees, directors, or others, by adding a new subsection to read as follows:

450 "(c) Unless prior approval of a change in executive officer is required under Code
451 Section 7-1-705.1 and notwithstanding subsection (e) of Code Section 7-1-703 requiring
452 a criminal background check prior to the initial date of hire, a licensee shall notify the
453 department in writing of any change of executive officer in such a manner that the notice
454 is received by the department no later than ten business days after the effective date of the
455 change. In the event of such change, the licensee shall initiate a criminal background check
456 no later than ten business days after the effective date of the change."

457 **SECTION 22.**

458 Said chapter is further amended by revising Code Section 7-1-705.1, relating to required
459 approval for change of control or ultimate equitable owner, additional requirements, and
460 denial and notification of reasons relative to licensees for the cashing of payment
461 instruments, as follows:

462 "7-1-705.1.

463 (a) Except as provided in this Code section, no person shall become an ultimate equitable
464 owner of any licensee through acquisition or other change in control or become an
465 executive officer of a licensee as a result of such acquisition or other change in control
466 unless the person has first received written approval for such acquisition, change in control,
467 or designation as an executive officer from the department. In order to obtain such
468 approval, such person shall:

- 469 (1) File an application with the department in such form as the department may prescribe
470 from time to time;
- 471 (2) Provide such other information as the department may require concerning the
472 financial responsibility, background, experience, and activities of the applicant, its
473 directors and executive officers, if a corporation, and its members, if applicable, and of
474 any proposed new directors, executive officers, members, or ultimate equitable owners
475 of the licensee; and
- 476 (3) Pay such application fee as the department may prescribe.

- 477 (b) The department may prescribe additional requirements for approval of such
478 acquisition, change in control, or designation as an executive officer as a result of such
479 acquisition or other change in control through rules and regulations.
- 480 (c) If the application is denied, the department shall notify the applicant of the denial and
481 the reasons for the denial."

482 **SECTION 23.**

483 Said chapter is further amended in Code Section 7-1-706, relating to record-keeping
484 obligations, investigations and examinations by the department, examination fees,
485 administration of oaths and issuing of subpoenas, confidentiality, and civil liability relative
486 to licensees for the cashing of payment instruments, by revising subsection (l) as follows:

487 "(l) Examinations and investigations conducted under this article and information obtained
488 by the department in the course of its duties under this article are confidential, except as
489 provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition
490 to the exceptions set forth in subsection (b) of Code Section 7-1-70, the department is
491 authorized to share information obtained under this article with other state and federal
492 regulatory agencies or law enforcement authorities. In the case of such sharing, the
493 safeguards to confidentiality already in place within such agencies or authorities shall be
494 deemed adequate. The commissioner or an examiner specifically designated may disclose
495 such information as is necessary to conduct a civil or administrative investigation or
496 proceeding. Information contained in the records of the department that is not confidential
497 and may be made available to the public either on the department's website, or upon receipt
498 by the department of a written request, or in the Nation-wide Multistate Licensing System
499 and Registry shall include:

- 500 (1) The name, business address, and telephone, facsimile, and license numbers of a
501 licensee;
- 502 (2) The names and titles of the principal officers;
- 503 (3) The name of the owner or owners thereof;
- 504 (4) The business address of a licensee's registered agent for service;
- 505 (5) The name, business address, telephone number, and facsimile number of all locations
506 of a licensee;
- 507 (6) The terms of or a copy of any bond filed by a licensee;
- 508 (7) Information concerning any violation of this article, any rule or regulation, or order
509 issued under this article, provided that the information is derived from a final order of the
510 department; and
- 511 (8) Imposition of an administrative fine or penalty under this article."

512

SECTION 24.

513 Said chapter is further amended in Code Section 7-1-1000, relating to definitions relative to
514 mortgage lenders and mortgage brokers, by revising paragraph (32) as follows:

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

518

SECTION 25.

519 Said chapter is further amended in Code Section 7-1-1009, relating to maintenance of books,
520 accounts, and records, investigation of licensees and registrants by the department,
521 confidentiality, and exemptions from civil liability relative to mortgage lenders and mortgage
522 brokers, by revising subsection (g) as follows:

523 "(g) Examinations and investigations conducted under this article and information obtained
524 by the department in the course of its duties under this article are confidential, except as
525 provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition
526 to the exceptions set forth in subsection (b) of Code Section 7-1-70 and in paragraphs (3)
527 and (4) of subsection (d) of this Code section, the department is authorized to share
528 information obtained under this article with other state and federal regulatory agencies or
529 law enforcement authorities. In the case of such sharing, the safeguards to confidentiality
530 already in place within such agencies or authorities shall be deemed adequate. The
531 commissioner or an examiner specifically designated may disclose such limited
532 information as is necessary to conduct a civil or administrative investigation or proceeding.
533 Information contained in the records of the department which is not confidential and may
534 be made available to the public either on the department's website, ~~or~~ upon receipt by the
535 department of a written request, or in the Nation-wide Multistate Licensing System and
536 Registry shall include:

- 537 (1) For mortgage brokers and mortgage lenders, the name, business address, and
538 telephone, facsimile, and license numbers of a licensee or registrant;
- 539 (2) For mortgage brokers and mortgage lenders, the names and titles of the principal
540 officers;
- 541 (3) For mortgage brokers and mortgage lenders, the name of the owner or owners
542 thereof;
- 543 (4) For mortgage brokers and mortgage lenders, the business address of a licensee's or
544 registrant's agent for service; and
- 545 (5) The terms of or a copy of any bond filed by a licensee or registrant."

546

SECTION 26.

547 (a) Except as provided for to the contrary in subsection (b) of this section, this Act shall
548 become effective upon its approval by the Governor or upon its becoming law without such
549 approval.

550 (b) It is not the intent of the General Assembly to affect the law applicable to litigation
551 pending as of March 9, 2018.

552

SECTION 27.

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