

# Legislative Update

## Georgia State Capitol News

*Issue VIII*

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*March 23, 2007*

The General Assembly was **in session on Monday and Tuesday of this week. Tuesday was the twenty-ninth Legislative day.** The General Assembly is in recess until next Tuesday, March 27, 2007, which will be the thirtieth legislative day. This is the last day that a bill can pass from one house to the other and get all the way through this session.

### **Bills Identified for Tracking**

Three bills introduced this week were identified as bills we need to track: **HB 663; HB 718; and HB 720.** **Although these bills were introduced too late to pass this session, they will remain as live bills in the 2008 session and will bear watching.**

**HB 663 by Representative Ben Harbin from Evans, and others, proposes to add a new chapter to Title 7 called the “Basic Credit Opportunity Act”.** It provides a licensing process for those wishing to offer “credit opportunity services” (e.g. short term loans, debit cards, check to card services, check cashing services, money transfer services, bill payment services and money orders). In regard to loans, it would seek to regulate anyone making loans under \$3,000. **Although we have been told that it was intended for the bill to contain an exemption from the licensing process for banks, the bill contains no such exemption. Obviously, this bill is of concern and we will have to monitor this bill very carefully.**

**HB 718 and HB 720 were both introduced by Representative Bob Holmes from Atlanta. HB 718 basically appears to propose a licensing scheme for mortgage loan originators and HB 720 would significantly revise the Georgia law dealing with title pawn transactions (The second bill this session revising this law.)**

### **Activity on Bills Previously Identified for Tracking**

**There was activity involving a number of bills we are tracking during the recent two week recess, which ended on Monday of this week.** A hearing was held on **SB 70, the DBF Housekeeping Bill**, by the House Banks and Banking Committee. However, no action was taken on the bill. The Senate Banking and Financial Institutions Committee passed out **HB 96**, the bill adding **Federal Home Loan Bank letters of credit** to the list of acceptable collateral for public deposits, the committee report was filed on Monday of this week, the first legislative day after the recess, and the bill now resides in the Senate Rules Committee. The House Ways and Means Committee revised **HB 361** by deleting the provisions dealing with **retraining tax credits**, alleviating our concerns with the bill, and passed it out. The committee report for the bill (HB 361) was filed on Monday of this week and the bill now resides in the House Rules Committee. The House Ways and Means Committee also passed out **HB 441**, the **corrections bill relating to state income tax liability** in connection with the holding of U. S. Government Securities Obligations as assets, sending the bill to the House Rules Committee. **The House Rules Committee put the bill (HB 441) on the calendar for House floor action on the thirtieth legislative day, next Tuesday, March 27, 2007.**

**HB 163 the Payday Lending was placed on the calendar for House floor action on Tuesday of this week.** As you may have heard by now, **after considerable debate the bill did not receive a constitutional majority and did not pass.** Actually the vote was a tie at 84 for and 84 against, but 91 votes were needed for passage. **Notice was served for the bill to be reconsidered on the thirtieth legislative day, next Tuesday. An attempt at reconsideration is expected. Stay tuned.**

**The *Legislative Update* is your guide to legislation affecting the community banking industry in Georgia. Summaries of the bills we are tracking were prepared by Susie Sicken of Miller,**

**Hamilton, Snider & Odom, LLC with the assistance of the CBA staff. Miller, Hamilton, Snider & Odom, LLC is a CBA Associate Member Company.**

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**Any status changes of bills during the course of a legislative week will be reflected in italics.**  
\*\*A COPY OF THE LEGISLATIVE UPDATE CAN ALSO BE FOUND ON OUR WEBSITE AT [www.cbaofga.com](http://www.cbaofga.com).\*\*  
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**SENATE BILLS**

**SB 24-Computer Security; persons provide identifying information by falsely representing themselves to be a business; definitions; penalties (Senator Staton, 18<sup>th</sup>)**

**SUMMARY:** Senate Bill 24 amends the Code by the addition of a new Part 4 to 16-9 of the Code to provide both criminal (imprisonment and fines) and civil penalties (for the ISP provider, individual affected, web page owner) against persons utilizing the internet or electronic mail to induce another to provide identifying information by falsely representing themselves to be a business without the authority or approval of the business.

**STATUS AND COMMENTARY (AS NEEDED):** Passed Senate on 1/26/07; Pending – House Judiciary Non-Civil.

This is basically an “anti-phishing bill”. Clearly in concept we are supportive of this legislation. However, the bill contains safe-harbor provisions for employers if their employees solicit through company computers and internet connections a person’s personal identifying information without the authority or approval of the employing business. **It is our understanding that there will be efforts to strengthen the safe-harbor provisions in the House and we are supportive of those efforts. We will continue to carefully monitor the progress of this bill.**

**SB 70 - Financial Institutions; update banking laws to reflect changes in federal law (Sen. Hamrick, 30<sup>th</sup>)**

**SUMMARY:** The bill makes technical and clarifying changes to the banking code, the credit union code, the licensing law for residential mortgage lenders and brokers and the laws dealing with money transmitters. A section by section summary of the bill prepared by the DBF can be found at the following link .

**STATUS AND COMMENTARY (AS NEEDED):** Passed – Senate by a vote of 52-1 on 2/12/07; Pending House Banks & Banking Committee.

CBA supports this bill.

**SB 236 - Georgia Personal Identity Protection Act; state agencies; breach of security; personal information (Sen. Rogers, 21<sup>st</sup>)**

**SUMMARY:** SB236 amends the statutes relating to identify theft to require certain public institutions to provide notice upon a breach of security regarding personal information, permits telephone notice of such breach, and substituted notice if the cost of providing the notice by an information broker or public institution exceeds \$50,000 (rather than \$250,000.00) and affects 100,000 or more individuals (rather than 500,000). This bill also changes the elements that must be proven to convict a person for identify fraud and provides for the victim’s right to file a report of suspected identity fraud with a law enforcement agency.

**STATUS AND COMMENTARY (AS NEEDED):** *Passed – Senate Agriculture & Consumer Affairs Committee; Pending – Senate Rules Committee*

We will monitor this bill through the legislative process.

**HOUSE BILLS**

**HB 35-Credit report agency; person request security freeze; provisions (Rep. Benton, 31<sup>st</sup>)**

**SUMMARY:** House Bill 35 amends the Georgia Code by the addition of a new Article 35 to 10-1 to the Georgia Code which establishes procedures permitting an individual to have a security freeze placed on his credit report at a credit reporting agency and to have the security freeze temporarily lifted. The credit reporting agency must disclose the process of placing and temporarily lifting a security freeze and the legislation also sets forth the duties of the credit reporting agency with respect to the security freeze. A consumer fee of \$5.00 may be charged by the credit reporting agency for any security freeze, or removal or temporary lifting of the freeze, however, there may be no charge against an individual who is a victim of identify theft. The bill also excludes the application of such provisions to certain entities.

**STATUS AND COMMENTARY (AS NEEDED):** Pending – House Banks & Banking Committee.

Bill was heard by the Committee on Tuesday, January 30<sup>th</sup> and assigned to a subcommittee for further study. The subcommittee is chaired by **Representative Calvin Hill, Vice Chairman of the House Banks and Banking Committee**, from Canton. We will continue to monitor the progress of the various “credit file freeze” bills.

**HB 38-Credit report; place security freeze provisions (Rep. Teilhet, 40<sup>th</sup>)**

**SUMMARY:** House Bill 38 amends the Code by the addition of a new Code Section 10-1-913 which establishes procedures permitting an individual to have a security freeze placed on his consumer credit agency credit report utilized to determine insurance premiums, eligibility for coverage or tier placement and to have the security freeze temporarily lifted. The credit reporting agency must disclose the process of placing and temporarily lifting a security freeze and the legislation also sets forth the duties of the credit reporting agency with respect to the security freeze. No fee may be charged by the credit reporting agency for any security freeze, or removal or temporary lifting of the freeze.

**STATUS AND COMMENTARY (AS NEEDED):** Pending – House Banks & Banking Committee.

Bill was heard by the Committee on Tuesday, January 30<sup>th</sup> and assigned to a subcommittee for further study. The subcommittee is chaired by **Representative Calvin Hill, Vice Chairman of the House Banks and Banking Committee**, from Canton. We will continue to monitor the progress of the various “credit file freeze” bills.

**HB 96 - State depositories; Federal Home Loan Bank; secure state funds (Rep. Mills, 25<sup>th</sup>)**

**SUMMARY:** HB 96 amends Georgia Code Section 50-17-59 to provide that Federal Home Loan Bank letters of credit may be accepted to secure state funds on deposit in state depositories.

**STATUS AND COMMENTARY (AS NEEDED):** Passed House by a vote of 167-0 on 1/30/07; *Passed - Senate Banking & Financial Institutions Committee; Pending Senate Rules Committee.*

There seems to be no controversy associated with this legislation this year. Hopefully, it will pass and **provide community banks with additional flexibility in securing public deposits. CBA supports this bill and we want to thank Representative James Mills (R), Chairman of the House Banks and Banking Committee, from Gainesville for introducing and handling this bill.**

**HB 121 - Corporations; summons of garnishment; change provisions (Rep. Willard, 49<sup>th</sup>)**

**SUMMARY:** HB 121 amends Code Section 18-4-23 to provide that summons of non-continuing garnishments must be served upon the agent in charge of either the registered office or the principal place of business of a corporation.

**STATUS AND COMMENTARY (AS NEEDED):** Pending – House Judiciary Committee.

The clarification provided by this bill should assist community banks with multiple locations to implement a timely freeze on any funds on deposit upon being served with a garnishment. **It should eliminate problems, which sometimes have occurred, when a garnishment is filed at a branch location resulting in a lag time before a freeze can be implemented.** The bill was heard by the House Judiciary Committee on Thursday, February 1st. After much discussion, it was decided that no vote would be taken on the bill. The bill was tabled and may be discussed later.

**CBA is in support of this bill.**

**HB 130 - Identity theft; security freezes; definitions; provisions (Rep. Hill, 21<sup>st</sup>)**

**SUMMARY:** House Bill 130 amends the Georgia Code to provide for procedures permitting an individual to have a security freeze placed on his credit report or credit score at a credit reporting agency and to have the security freeze temporarily lifted. The credit reporting agency must provide a means of temporarily lifting a security freeze and the legislation also sets forth the duties of the credit reporting agency with respect to the security freeze, including specific timing for the placement of the security freeze and the temporary lifting of the freeze. Fees which the consumer reporting agency may charge are established for any security freeze, or removal or temporary lifting of the freeze, however, there may no charge against an individual who is a victim of identify theft. The bill also excludes the application of such provisions to certain entities.

**STATUS AND COMMENTARY (AS NEEDED):** Pending – House Banks & Banking Committee.

Basically, this is the model bill developed by Equifax and it **contains exemptions from any “credit file freeze” placed by a consumer for any community bank with a previously existing deposit or loan account. We will continue to monitor the progress of the various “credit file freeze” bills but this bill would appear to be acceptable to community banks.** Bill was heard by the Committee on Tuesday, January 30<sup>th</sup> and assigned to a subcommittee for further study. The subcommittee is chaired by **Representative Calvin Hill, Vice Chairman of the House Banks and Banking Committee and author of this bill,** from Canton. We will continue to monitor the progress of the various “credit file freeze” bills.

**HB 160 - Republic of Sudan; certain transactions and bids by state agencies; prohibit (Rep. Brooks, 63<sup>rd</sup>)**

**SUMMARY:** House Bill 160 adds a new article to the Georgia State Administration Statutes prohibiting business dealings with companies and entities located in the Republic of Sudan. Specifically, House Bill 160 adds a new chapter 36 to Title 50 of the Official Code of Georgia Annotated, prohibiting state agencies from doing business with U.S. domestic companies which do not certify that they are not conducting business with companies or entities located in the Republic of Sudan. The Office of Treasury and Fiscal Services shall not use a financial institution as a depository unless it certifies in writing that the institution has no direct loans and no fore knowledge of any indirect loans outstanding to a government unit or national corporation of the Republic of Sudan; and an external investment manager selected by the Board of Trustees of the Employees Retirement System of Georgia may not invest in any stock, or other obligation of any company doing business with or in the Republic of Sudan.

**STATUS AND COMMENTARY (AS NEEDED):** Pending – House Governmental Affairs Committee

We will monitor this bill.

**HB 163 - Deferred Presentment Services Act; enact; repeal "payday lending" prohibition (Rep. Tumlin, 38<sup>th</sup>)**

**SUMMARY:** HB 163 provides a new chapter 9 to Article 7 of the Georgia Code which would permit payday lending. Such lending would only be permitted by an entity licensed by the commissioner of insurance. The legislation, among other things, specifies the terms which must be included in a written agreement with respect to a payday transaction, limits the fees which may be charged, limits the timing of the transaction, prohibits renewal of the transaction, requires in certain instances the payday lender to provide a mandatory repayment plan in the event the borrower is unable to repay the transaction on the required date, prohibits payday lending transactions to a member of the US military or his or her dependents, and provides the consumer with a one day right of rescission.

**STATUS AND COMMENTARY (AS NEEDED):** *Passed House Banks & Banking Committee (17 to 11) Pending - House Rules Committee.*

We will need to track this bill, which would legalize payday lending in Georgia, primarily in order to monitor the discussion on interest and usury and make sure the discussion does not spill over into bank offered products. Bill was heard by the Committee on Tuesday, January 30<sup>th</sup> and assigned to a subcommittee for further study. The

subcommittee is chaired by **Representative Mike Coan from Lawrenceville**. A number of changes were made to the bill in the committee process, including adding some additional consumer protections, **changing the supervisory agency for payday lenders from the Insurance Commissioner to the Banking Commissioner** and establishing a funding mechanism that will allow the DBF to collect various application and examination fees and remit the funds to the general treasury after netting out the cost of administering the supervisory program for payday lenders. **This type of funding mechanism seems to largely eliminate concerns that DBF will not be provided sufficient funding to properly supervise these lenders.**

**HB 353 - Revenue and taxation; unclaimed property; provisions (Rep. O'Neal, 146<sup>th</sup>)**

**SUMMARY:** HB 353 provides for certain additional methods for the service of subpoenas and garnishments by the tax commissioner, the right of the tax commissioner to offset a person's delinquent state tax liability against the person's interest in unclaimed property paid to the state, a new method for the attachment and perfection of a state tax lien against the real property of the taxpayer, a new requirement for reporting account information to the tax commissioner and a new method for attaching a person's account at a financial institution to pay a state tax lien. As to a person whose property is subject to a state tax lien, the tax commissioner may request account balance information and other information about such person from a financial institution no more than 4 times a year. The financial institution must provide the report within 30 days of the request in machine readable form and the tax commissioner must pay a fee not to exceed the actual costs incurred by the financial institution to search its records and provide the report. As to the attaching of accounts at financial institutions for payment of a state tax lien, on the receipt of notice of a tax lien, the financial institution must search its records and seize and attach the funds in any accounts of the person listed in the notice of lien in the amount of the lesser of the total amount in the accounts or amount stated in the notice of tax lien, must report within 15 days of receipt of the notice, the amount of funds that has been seized, and must pay those funds or other funds as specified in a tax commissioner's notice to the financial institution to the tax commissioner after the deduction of a fee by the financial institution. The tax commissioner is required to provide notice to the account holder prior to issuing the notice to the financial institution to pay the funds in order to permit the account holder to challenge the notice of tax lien.

**STATUS AND COMMENTARY (AS NEEDED):** *Passed – House Ways & Means Committee; Pending House Rules Committee.*

This bill contains a number of provisions designed to assist the State Revenue Commissioner to collect delinquent taxes owed to the state. **Included in the bill is the legislation we mentioned as a possibility at the Fall Group Meetings that requires something similar to the data match program relating to delinquent child support payments in connection with delinquent state taxes.** The Tax Reform Subcommittee, among other changes, changed the bill to make the data match program voluntary on the part of financial institutions. ***The full committee changed the bill that came out of subcommittee to make the data match program only apply to banks with total assets of greater than \$15 billion. You may recall that the subcommittee had made the data match program voluntary; however, it was discovered that a strictly voluntary program would place a bank in violation of the federal privacy laws. Even so, all community banks would be exempt from the data match requirements as it is currently written. We want to thank Chairman Larry O'Neal for his help in improving this legislation. We will continue to monitor the progress of this bill and keep you informed.***

**HB 361 - Income tax; certain state income tax credits; change certain provisions (Rep. O'Neal, 146<sup>th</sup>)**

**SUMMARY:** HB 361 relates to state income tax credits for approved retraining programs and qualified research expenses. The bill amends Section 48-7-40.5 relating to the state income tax credits granted to business enterprises in connection with an approved retaining program. The amendment limits this tax credit to "business enterprises", businesses engaged in manufacturing, warehousing and distribution, processing, telecommunications, tourism and research and development industries, limits the amount per employee to \$1,000 per year and requires the employee to be employed for at least 35 hours per week. Under current law, these retraining tax credits are available to "any employer", who meets certain criteria. Under this proposal community

banks would no longer be eligible to apply for such credits, since they do not fall within the definition of the a “business enterprise”. This legislation also amends the calculation of the income tax credit for qualified research expenses.

**STATUS AND COMMENTARY (AS NEEDED):** *Passed – House Ways & Means Committee; Pending – House Rules Committee.*

This legislation **basically revamps the state’s current retraining tax credit program.** Currently, “any employer” can potentially be eligible for these state tax credits provided certain criteria are met. I know that many community banks have taken advantage of these state tax credits in the past. **Among other things this bill narrows the field of employers that are eligible for such tax credits** and limits the amount of tax credits annually to \$1,000 per employee. **Since community banks do not fall within the definition of the newly defined term in this bill, “business enterprises”, effectively this bill would eliminate such tax credits for community banks.** Even if community banks were included in the definition of a business enterprise, another provision in the bill seems to eliminate such tax credits unless the retraining is necessary in connection with “new technology”. **The bill seems to exclude “routine upgrades” or “a change in vendor or service provider” from “new technology”.** Obviously, this bill is of concern to us. We will continue to monitor it and keep you informed.

**HB 398 - Pawnbrokers; title pawn transactions; provisions (Rep. Oliver, 83<sup>rd</sup>)**

**SUMMARY:** HB 398 amends certain provisions related to pawnbrokers, including establishing different provisions related to motor vehicle title pawn transactions, decreasing the amount of interest and fees that may be charged for title pawn transactions, and providing for the repossession of vehicles subject to title pawn transactions and the subsequent sale of such vehicles.

**STATUS AND COMMENTARY (AS NEEDED):** Pending – House Banks & Banking Committee.

We will continue to monitor the discussion surrounding this legislation due to the interest and usury implications.

**HB 420 - Georgia Industrial Loan Act of 2007; enact (Rep. Ehrhart, 36<sup>th</sup>)**

**SUMMARY:** HB 420 amends the Georgia Industrial Loan Act to provide that that the commissioner of banking and finance shall act as Industrial Loan Commissioner, to provide that applicants for a license under this Act must post a surety bond with the department of banking and finance for each location, to provide for increased application fee and annual licensing fees, to prohibit the selling of any insurance in connection with making or collecting an Industrial Loan Act loan, to prohibit the collection of late fees and maintenance fees, to prohibit certain terms in loan contracts, e.g. hold harmless clause, arbitration, to provide a one day right of rescission, to prohibit security or guaranties on a loan transaction, to limit the number of loans and certain loan renewals, to prohibit the extension of such loans to members of the US military and dependents, and to require the lender to provide a repayment plan if requested by a consumer that is unable to repay the loan or installment before the due date.

**STATUS AND COMMENTARY (AS NEEDED):** Pending – House Banks & Banking Committee.

This bill proposes to make a number of revisions to the Industrial Loan Act, including moving the supervision of industrial loan company licensees under the Commissioner of the Department of Banking and Finance. **Obviously we will continue to monitor this legislation due to its interest and usury implications and due to its potential impact on the banking department.**

**HB 441 - Income tax; federal obligations; taxable income; revise provisions (Rep. Floyd, 147<sup>th</sup>)**

**SUMMARY:** HB 441 amends Article 2 of Chapter 7 of Title 48 to change the computation of taxable income for corporations and individuals with respect to the reduction of taxable income as a result of interest or dividends on certain obligations of the United States. The amount of reduction from taxable income shall be reduced by any expenses attributable to the production of the interest or dividend income.

**STATUS AND COMMENTARY (AS NEEDED):** *Passed – House Ways & Means Committee; Pending – House Rules Committee.*

**This is the corrections bill relating to state income tax liability in connection with the holding of U. S. Government Securities Obligations. The bill would simply reverse the changes that were made in the statute two years ago, which has resulted in an increased state income tax liability for many community banks. The Income Tax Subcommittee of the House Ways and Means Committee, voted out the bill to the full committee with a recommendation of “do pass.” While the full committee had planned to consider the bill on Thursday, March 1, 2007, it was unable to do so because the “fiscal note” for the bill was not yet completed. We will keep you informed as things progress on this legislation. We want to thank Representative Johnny Floyd from Cordele for introducing this bill.**

**HB 562 - Fair lending; temporary loan; add definition (Rep. Dollar, 45<sup>th</sup>)**

**SUMMARY:** HB562 amends Code Section 7-6A-2 to provide for a definition of temporary loan – a loan of not more than 35 months. Temporary loans are excluded from the coverage of the Georgia Fair Lending Act.

**STATUS AND COMMENTARY (AS NEEDED):** Pending – House Banks & Banking Committee.

This bill should have little impact on community banks in view of the existing federal laws regarding Fair Lending. We will continue to monitor.

**HB 564 - Deposit account fraud; insufficient funds; stop payment; include act (Rep. Dollar, 45<sup>th</sup>)**

**SUMMARY:** HB 564 amends Code Section 16-9-20 to specify that deposit account fraud also occurs if the issuer of the item had insufficient funds in the account at the time the check was made or delivered and immediately stopped payment on the check and retained the item or services obtained for the check.

**STATUS AND COMMENTARY (AS NEEDED):** Pending – House Banks & Banking Committee.

We will continue to monitor.

**HB 579 - Landlord liens; definitions; provisions (Rep. Scott, 153<sup>rd</sup>)**

**SUMMARY:** HB579 provides that if a manufactured home has been vacant for more than 30 days or if a landlord has completed eviction of the owner of a manufactured home and notice of the vacancy or eviction is provided to a lienholder, the landlord may collect storage charges from the lienholder accruing from 30 days after the lienholder receives notice unless the lienholder provides notice to the landlord that it does not intend to pay the storage charges. Upon foreclosure of such manufactured home the lienholder is responsible for unpaid rent and storage charges that have accrued beginning 30 days after the eviction of the owner. This bill also provides that in litigation between the parties the prevailing party is entitled to an award of expenses of litigation.

**STATUS AND COMMENTARY (AS NEEDED):** Pending – House Judiciary Committee.

You may recall a similar bill was introduced by **Representative Scott** in the 2006 session. However, the problems contained in the 2006 bill have been corrected. **For example, there is no longer any ability for the landlord to require the lienholder to pay back rent owed prior to foreclosure on the manufactured home.** In the event of foreclosure, the lienholder would be responsible for unpaid rent and storage charges that have accrued beginning 30 days after the eviction of the owner. **We appreciate Representative Scott working to make this legislation fair and reasonable to all parties.**

**HB 0663 - Basic Credit Opportunity Act of 2007; enact (Rep. Harbin, 118<sup>th</sup>)**

**SUMMARY:** HB 663 amends Title 7 of the Georgia Code to add a new chapter which provides for the making of “credit opportunity services” (e.g. short terms loans, debit cards, check to card services, check cashing services as well as money transfer services, bill payment services, and money orders) by persons licensed under this chapter by the Department of Banking and Finance. Under this bill, licensees may extend credit (not secured by real property) in an amount not exceeding \$3,000 at an initial interest rate of up to 60% per annum plus a \$25.00

processing fee which may be assessed not more than twice in any twelve month period, plus late fees, monthly maintenance fees, and other fees. The bill specifies where these services may be provided, the disclosures which may be required, and certain terms (including defaults) which may or may not be included in the contract for the extension of credit. Any contract for the extension of credit which violates any provision of the chapter shall be void and the licensee shall have no right to collect or retain any principal or charges whatsoever with respect to the extension of credit. The bill requires licensees to report all customer credit activity on a quarterly basis to national credit bureaus.

**STATUS AND COMMENTARY (AS NEEDED)** *Pending – House Banks & Banking Committee.*