

Legislative Update

Georgia State Capitol News

Issue XII

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May 4, 2007

BILLS THAT PASSED

SENATE BILLS

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

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 <http://www.cbaofga.com/legislative/legislative-updates.php>.

STATUS AND COMMENTARY (AS NEEDED): Passed – Senate by a vote of 52-1 on 2/12/07; Passed out of the House Banks & Banking Committee on 3/29/07; Passed House on 4/11/07 and Senate agreed to House amendments on 4/13/07. The bill now awaits Governor’s signature.

CBA supported this bill and **we want to thank Senator Bill Hamrick, Chairman of the Banking and Financial Institutions Committee for introducing and handling this bill.**

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

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 in the Criminal Code 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 on 3/27/07 by vote of 51-0; Passed House on 4/20/07. The bill now awaits Governor’s signature.

As passed, this bill should not create any concerns for community banks.

HOUSE BILLS

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

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 on 3/28/07; Now awaits the Governor’s signature.

The passage of this bill will **provide community banks with additional flexibility in securing public deposits. CBA supported 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 441 - Income tax; federal obligations; taxable income; revise provisions (Rep. Floyd, 147th)

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 on 3/27/07 by vote of 164-0; Passed out of Senate Finance Committee on 3/29/07; Passed Senate on 4/11/07 and now awaits the Governor's signature.

This is the corrections bill relating to state income tax liability in connection with the holding of U. S. Government Securities Obligations. The bill simply reverses 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. We want to thank Representative Johnny Floyd from Cordele for introducing this bill. We would also like to thank Representative Larry O'Neal, Chairman of the House Ways and Means Committee, for his assistance on the bill.

BILLS AND RESOLUTIONS THAT DID NOT PASS

SENATE BILLS AND RESOLUTIONS

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

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 **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, **need to be strengthened for us to fully support. We will continue to carefully monitor the progress of this bill next session.**

SR 636 - Senate Comprehensive Lien Law Study Committee; create (Sen. Seabaugh 28th)

SUMMARY: A resolution creating the Senate Comprehensive Lien Law Study Committee. It requires the creation of a Senate Comprehensive Lien Law Study Committee to undertake a study of Georgia's lien laws generally and the application of these laws to Georgia's businesses and citizens to ensure that business interests are properly protected and that persons involved in the lien process are treated fairly and equitably.

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

HOUSE BILLS AND RESOLUTIONS

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

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 30th 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 next session.

HB 38-Credit report; place security freeze provisions (Rep. Teilhet, 40th)

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 30th 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 next session.

HB 121 - Corporations; summons of garnishment; change provisions (Rep. Willard, 49th)

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, 21st)

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 30th 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 next session.

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

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, 38th)

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): Failed to receive the constitutional majority of 91 votes for passage in the House on 3-20-07; Action from 3/20/07 was reconsidered on 3/27/07; Again failed to receive the constitutional majority of 91 votes on 3/27/07.

We will needed 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 did not spill over into bank offered products.

The bill failed to receive the constitutional majority of 91 votes; therefore this bill is now dead. If the issue of payday lending is to be considered again next year a new bill will have to be introduced.

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

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. It was discovered that a strictly voluntary program would place a bank in violation of the federal privacy laws. Therefore, **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, thereby exempting all community banks from the data match requirements. We want to thank Chairman Larry O'Neal for his help in improving this legislation. We will continue to monitor any progress of this bill in the next session and keep you informed.**

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

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 "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.

Originally this legislation **proposed to revamp the state's current retraining tax credit program. In the committee process the retraining tax credit provisions were deleted from the bill, alleviating our concerns with this legislation.** We will continue to monitor this bill in the next session and keep you informed.

HB 398 - Pawnbrokers; title pawn transactions; provisions (Rep. Oliver, 83rd)

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, 36th)

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 562 - Fair lending; temporary loan; add definition (Rep. Dollar, 45th)

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 next session.

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

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 next session.

HB 579 - Landlord liens; definitions; provisions (Rep. Scott, 153rd)

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 leinholder 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. We will continue to monitor this bill next session.**

HB 663 - Basic Credit Opportunity Act of 2007; enact (Rep. Harbin, 118th)

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 not 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.

Although this bill was introduced too late to pass this session, it will be a live bill in the 2008 session. The bill would seem to require a **separate license of anyone, even banks, to make any loans under \$3,000 in Georgia.** We have been informed that CompuCredit Corp. is the driving force behind this bill and the CompuCredit lobbyist has indicated that the bill was supposed to have an exemption included for banks. **Obviously, we will need to monitor this bill very carefully next year.**

HB 718 - Georgia Residential Mortgage Act; enact (Rep. Holmes, 61st)

SUMMARY:

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

Although this bill was introduced too late to pass this session, it will be a live bill in the 2008 session and we will need to monitor it.

HB 720 - Pawnbrokers; title pawn transactions; provisions (Rep. Holmes 61st)

SUMMARY: This legislation includes motor title pawn transactions under the criminal usury provisions and amends the laws relating to pawnbrokers so as to provide for different treatment of title pawn transactions, to provide for reductions in certain interest and fees for title pawn transactions and to provide for more stringent penalties for violation of the statutes related to pawnbrokers.

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

Although this bill was introduced too late to pass this session, it will be a live bill in the 2008 session and we will need to monitor it.

HR 827 - House Study Committee on Unbanked and Underbanked Consumers; create (Rep. Harbin, 118th)

SUMMARY: A resolution creating the House Study Committee on Unbanked and Underbanked consumers. It requires the creation of the House Study Committee on Unbanked and Underbanked Consumers to undertake a study of the conditions, needs, issues, and problems related to unbanked and underbanked consumers and recommend any action or legislation deemed necessary.

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

We will monitor next year.

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