

**Summary of Department of Banking and Finance's
2007 Housekeeping Bill**

Please find below a summary of the Department's housekeeping bill draft. The various interest groups we serve have been queried and their input has been considered in the final bill draft. Of course, there may be additional areas that arise as the legislative process develops.

A. Financial Institutions

1. Article 1 – Provisions Applicable to Department of Banking and Finance and Financial Institutions Generally; Part 1 – Purposes and Preliminary Matters

§7-1-4(35)(A)

A proposed amendment to redefine “statutory capital base” in order to address the valuation effects of goodwill or other intangibles related to the purchase, acquisition or merger of a bank charter. At present, goodwill or other intangibles related to bank acquisitions can result in substantial increases in limits on loans, investments, and fixed assets, for an institution as a result of a purchase, acquisition, or merger – without any increase in tangible assets. The effect of proposed language would limit the impact on such transactions, and provide similar treatment to that of national banks.

2. Article 2 – Banks and Trust Companies; Part 3 – Powers and Banks

§7-1-286

A proposed amendment to more closely follow federal agency rules and regulations regarding real estate loans; to remove some state limitations and exemptions to real estate loans in order to provide parity for Georgia state-chartered banks with nationally chartered banks. Proposed legislation would provide equal and consistent treatment to regulated entities between the Department and federal regulators. Language adding loan rules applicable only to Georgia state-chartered banks have been deleted; while language consistent with national bank lending requirements has been inserted.

3. Article 2 – Banks and Trust Companies; Part 10 – Shareholders

§7-1-437(a)

A proposed amendment to clarify the authorization of the selection of a bank shareholder proxy vote by electronic means. Proposed language would follow language found in the Georgia Corporate Code.

4. Article 2 – Banks and Trust Companies; Part 14 – Merger and Consolidation of State Banks and Trust Companies

§7-1-530; §7-1-531; §7-1-532; §7-1-533; §7-1-534; §7-1-535; §7-1-536; §7-1-537; Part 15 – Conversions, Mergers, and Consolidations Involving National Banks; §7-1-557; Part 18 – Bank Branches, Offices, Facilities and Holding Companies; §7-1-601; §7-1-606; and §7-1-608

Proposed amendments to each of the above referenced individual code sections intended to follow the Georgia Corporations Code which allows “share exchange transactions.” A “share exchange” in the banking context would simplify certain acquisition transactions so that an interim bank merger and related merger applications would not be required. With a share exchange, the Bank Holding Company (BHC) would enter into a share exchange agreement with the target bank. The agreement would provide that if the target bank’s shareholders approve the transaction by the requisite vote (2/3 of outstanding shares for Georgia banks), then all of the target bank’s outstanding stock would be exchanged for the consideration being offered by the BHC (cash, stock, notes, etc.) Currently the Financial Institutions Code is silent as to whether or not such a share exchange would be allowable – a proposed change to the code would clarify that such transactions are allowed.

Note that we have used the current format of the existing Financial Institutions Code provisions, thereby requiring the insertion of the share exchange provision into a number of individual code sections (as enumerated above).

B. Article 3 - Credits Unions; Part 2 Operation and Regulation

§7-1-670

An amendment to remove the referral to the requirements of §7-1-286 based upon the amendments proposed to that section in the housekeeping bill. New language that has been proposed for §7-1-286 refers to federal provisions enumerated for banks. Removal of the reference to §7-1-286 in this credit union provision does not change or alter in any way federal loan requirements applicable to credit unions, which provide for specific limitations on member business lending that apply to all federally insured credit unions.

C. Check Sellers & Money Services Businesses

1. Article 4 - Sale of Checks or Money Orders

§7-1-681

An amendment is proposed to include a clarification to the list of entities that are exempt from licensure by the Department as a check seller or money transmitter, which provides that the exempt entity must be federally insured.

§7-1-682

An amendment clarifies the Department's obligation to deny applications for and revoke licenses for felony convictions of designated persons. It also updates language to streamline procedures for criminal background checks to be obtained and requires the public posting of licenses.

§7-1-683

This amendment provides clarification regarding a licensee's obligation to obtain a surety bond or dedicate assets. Certain types of assets have been deleted from the list of those that currently are acceptable to be dedicated to the Department in lieu of obtaining a bond. Language has also been included to clarify the applicability of code requirements relative to an individual who directs the affairs or establishes policy for the applicant or licensee.

§7-1-686

Language is included in this provision to update notice requirements regarding a change in the number of the licensee's locations.

§7-1-687

This amendment clarifies that notification regarding the designation of agents by the licensee must be provided to the Department in writing.

§7-1-689

Language has been inserted to provide for the administrative procedures to be followed when bond coverage is not maintained by a licensee. It also changes the procedures to be undertaken when administrative action is taken by the Department against an agent of a licensee. This amendment further provides that any notice or final order sent by certified mail which is returned to the Department as "refused" or "unclaimed" will be deemed to have been received by the addressee.

§7-1-689.1

Language has been inserted to provide for changes in procedures when other administrative actions by the Department are taken. The amendment includes a provision that any notice or final order sent by certified mail that is returned to the Department as "refused" or "unclaimed" will be deemed to have been received by the addressee.

§7-1-692

This amendment prohibits a licensee from the purposeful withholding, deletion, destruction or alteration of information required by the Department. It also prohibits a licensee from making false statements or material misrepresentations to the Department.

2. Article 4A - Cashing Checks, Drafts, or Money Order for Consideration

§7-1-700

The amendment seeks to clarify the existing definition of “check casher” and provide for a definition of a “registered casher of checks” so as to require registration for those engaged in cashing checks for a fee that is limited to the greater of \$2.00 or 2% of the face value of the check.

§7-1-701

This language change makes this section applicable to registered cashers of checks as well as to licensed check cashers.

§7-1-702

This amendment clarifies the Department’s obligation to deny applications for and revoke licenses and registrations for felony convictions and streamlines procedures for criminal background checks to be obtained. It also specifies the dates on which licenses and registrations will expire each year.

§7-1-704

This language change makes this section applicable to registered cashers of checks as well as to licensed check cashers.

§7-1-705

The amendment will make this section applicable to registered cashers of checks as well as to licensed check cashers. Clarification is also included regarding check bearer identification. Requirements to advertise the need to produce identification have been eliminated.

§7-1-706

This amendment adds a provision for fees to be charged by a registered check casher at no more than \$2.00 or 2% of the face amount of the check. (Please note: licensed check casher fees will not change and currently range from 0% to 10% of the face amount of the check or \$5.00, whichever is greater, dependent upon the type of instrument, i.e. public assistance check, social security check or personal check, etc.

§7-1-707

The language proposed seeks to allow the Department to suspend or revoke a license or registration in an instance in which requested information has been purposefully withheld, deleted, destroyed or altered, or when making false statements or material misrepresentations have been made to the Department. This section also is made applicable to registered check cashers in addition to licensees. Further, this amendment proposes to change the procedures to be followed when administrative action is taken by the Department against designated persons. It also includes a provision that any notice or final order sent by certified mail that is returned to the Department as “refused” or “unclaimed” will be deemed to have been received by the addressee.

§7-1-709

This amendment modifies the availability of exemptions from licensure and provides that the section does not apply to any entity that cashes checks for which no fee is charged.

D. Mortgage Lenders & Mortgage Brokers

1. Article 13 - License’s of Mortgage Lenders and Mortgage Brokers

§7-1-1001

In order to enhance protections for Georgia consumers in the lending context the proposed change removes the availability of a licensing exemption for a person (which would include out-of-state unlicensed lenders), other than a natural person, to make five or fewer loans per year in this state.

§7-1-1004

This amendment requires licensees and applicants to commence performing background checks within ten days of the initial hire of an employee. In addition the timeframe in which the Department may not issue a license or may revoke a license from an applicant or licensee that employs any person against whom a final cease and desist order has been issued has been extended from three to five years.

§7-1-1006

This amendment eliminates branch application approval by operation of law if an application is not acted upon by the Department within 30 days.

§7-1-1008

This amendment requires that a person who directly or indirectly acquires 10% or more of the ownership of a licensed entity must follow certain approval steps. The prior provision set the ownership threshold at 25%.

§7-1-1009

This amendment clarifies that a licensee should maintain separate personal and business records.

§7-1-1016

This amendment provides language prohibiting the use of loan information pertaining to a designated individual in advertisements without required disclosures being made.

§7-1-1017

Language has been added to allow the Department to suspend or revoke a mortgage broker education approval on any ground on which it might refuse to issue an approval. The amendment includes a provision that any notice or final order sent by certified mail that is returned to the Department as “refused” or “unclaimed” will be deemed to have been received by the addressee.

§7-1-1018

This amendment includes a provision that any notice or final order sent by certified mail which is returned to the Department as “refused” or “unclaimed” is deemed to have been received by the addressee.