

March 2012

## BANKING AND FINANCE Financial Institutions: Change Georgia Department of Banking and Finance Regulations Relating to Financial Institutions

Georgia State University Law Review

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### Recommended Citation

Georgia State University Law Review, *BANKING AND FINANCE Financial Institutions: Change Georgia Department of Banking and Finance Regulations Relating to Financial Institutions*, 12 GA. ST. U. L. REV. (2012).  
Available at: <https://readingroom.law.gsu.edu/gsulr/vol12/iss1/45>

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## **BANKING AND FINANCE**

### ***Financial Institutions: Change Georgia Department of Banking and Finance Regulations Relating to Financial Institutions***

**CODE SECTIONS:** O.C.G.A. §§ 7-1-4, -7, -37, -43, -61, -64, -68, -71 (amended), -78 (new), -260 to -261, -288 to -289, -311, -416, -488, -491, -532 to -534, -552, -590 (amended), -591 to -594 (new), -603, -634, -683 to -685, -702 to -703, -716, -721, -1002, -1011, -1018 (amended)

**BILL NUMBER:** SB 103

**ACT NUMBER:** 343

**GEORGIA LAWS:** 1995 Ga. Laws 673

**SUMMARY:** The Act amends many provisions in the Code regarding the regulation of financial institutions. The Act clarifies Georgia banking law as it applies to local representative offices of out-of-state banks. The Act defines certain terms and changes the restrictions imposed upon the Commissioner of Banking and Finance, Deputy Commissioner, and Banking and Finance Department examiners in their personal financial relationships with the banks they regulate. The Act revises provisions that relate to the frequency and scope of regulatory examinations. The Act further provides that banks may acquire and hold for their own account shares of stock or partnership interests in a corporation or partnership engaged in the development of low and moderate income housing, job training, or job placement programs. The Act changes the filing requirements relating to the merger and consolidation of financial institutions. The Act changes the provisions relating to the expansion or extension of existing bank facilities, automated teller machines, and point-of-sale terminals. Additionally, the

Act amends licensure requirements. Finally, the Act prohibits the purchase of mortgages from unlicensed brokers.

EFFECTIVE DATE: July 1, 1995

### *History*

With the enactment of the Federal Riegle-Neal Bill,<sup>1</sup> providing for nationwide interstate banking, Georgia needed to modify its state banking regulations to deal more effectively with banks that may be branching into Georgia, but are chartered and principally regulated by another state or the federal government.<sup>2</sup> Under the Riegle-Neal Act, Georgia had until September 1995 to prepare for the arrival of interstate banking—the free expansion across state lines for nationally chartered banks.<sup>3</sup> Further, under the Riegle-Neal Act, Georgia has until June 1997 to prepare for interstate branching in which banks will not need to maintain separate state bureaucracies within each state in which they do business.<sup>4</sup> The Act attempts to fine-tune many of Georgia's banking laws in order to effectively prepare for interstate banking, as opposed to interstate branching.<sup>5</sup>

This housekeeping measure is designed to address recent changes in technology and the mortgage arena.<sup>6</sup> In addition, the Act alters the regulatory effort of the Georgia Department of Banking and Finance (Department) in order to ease administrative burdens on the Department.<sup>7</sup> The Department routinely drafts measures of this type to keep its regulatory

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1. Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 [hereinafter Riegle-Neal Act].

2. Telephone Interview with Leslie Bechtel, Deputy Commissioner for Legal Affairs of Banking and Finance (Sept. 8, 1995) [hereinafter Bechtel Interview]. Ms. Bechtel has been an adjunct professor at Georgia State University College of Law. *Id.* The Department needed the bill to comply with federal law. *Id.* The Department prepared the bill and Sen. Loyce Turner, Senate District No. 8, agreed to sponsor it. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

authority current and effective in meeting the needs of Georgia's banking environment.<sup>8</sup>

### SB 103

#### *Definitions*

The Act adds paragraph (1.5) to Code section 7-4-1 relating to financial institutions.<sup>9</sup> This paragraph defines the term "agency relationship" as:

a relationship created by a contractual agreement whereby a financial institution agrees with a third party, including another financial institution, to act in a principal or agent capacity to facilitate the conduct of activities related to the business of banking, which activities are currently authorized under this chapter or under other applicable law.<sup>10</sup>

This definition was added because many activities in which financial institutions are involved are conducted through an agency relationship with a third party.<sup>11</sup> It is intended that a financial institution should not conduct a nonbanking activity indirectly by acting as an agent for a nonbank company that is not subject to the regulations of the Department.<sup>12</sup>

Code section 7-1-4 is also amended to provide for three additional categories of financial institutions to bring all companies involved in banking activities under the regulation of the Department for certain purposes.<sup>13</sup> First, "financial institution" is broadened to include national banks, savings and loan associations, or federal credit unions for the purposes of "paragraph (10) of Code Section 7-1-261, relating to additional operational powers of banks and trust companies."<sup>14</sup> Second, "[f]or the purposes of Code Section 7-1-61, 'financial institution' shall also include a bank holding company as defined in Code Section 7-1-605."<sup>15</sup> Third, "[f]or the purposes of paragraph (10) of Code Section 7-1-261, relating to agency relationships, 'financial

8. *Id.*

9. O.C.G.A. § 7-1-4(1.5) (Supp. 1995).

10. *Id.*

11. Bechtel Interview, *supra* note 2.

12. Bechtel Interview, *supra* note 2.

13. Bechtel Interview, *supra* note 2.

14. O.C.G.A. § 7-1-4(21)(H)(xii) (Supp. 1995).

15. *Id.* § 7-1-4(21)(I).

institution' shall include banks chartered by states other than Georgia."<sup>16</sup>

*Changes Affecting Department of Banking and Finance*

The Act amends Code section 7-1-7, relating to publication of notices or advertisements, to provide that the Department may waive or modify any regulatory requirement to publish notices whenever it determines that a lesser number of publications will reduce the administrative burden while adequately serving the public interest.<sup>17</sup> However, the Act mandates that "in no event shall the regulation provide for the publication of a notice for less than once a week for two weeks."<sup>18</sup> This section, along with several others, was drafted to reduce the administrative burden upon the banks.<sup>19</sup> The purpose of this section is to alleviate some of the administrative burden that compliance with notice and publication requirements places on banking institutions.<sup>20</sup>

Code section 7-1-37, which prohibits the Banking and Finance Commissioner (Commissioner), Deputy Commissioners, and Department examiners from engaging in certain prohibited transactions with a regulated financial institution, is amended to provide that, for purposes of subsection (c), "a financial institution shall not be considered regulated solely because it is required to file an exemption from licensing under Code Section 7-1-1001."<sup>21</sup> In addition, subsection (d) is amended to allow these officials to incur up to \$10,000 of lender credit card obligations to a financial institution, or up to \$20,000 of consumer loans when the money, property, or services are primarily for personal, family, or household purposes.<sup>22</sup> Also, exempted from the Act are all mortgage loans or loans secured by the employee's residence.<sup>23</sup>

The Act adds subsection (e), providing that no examiner or supervisor "may examine a financial institution to which he or she is indebted, nor may an examiner obtain credit from a

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16. *Id.* § 7-1-4(21)(J).

17. *Id.* § 7-1-7(b)(3).

18. *Id.*

19. Bechtel Interview, *supra* note 2.

20. Bechtel Interview, *supra* note 2.

21. O.C.G.A. § 7-1-37(c) (Supp. 1995).

22. *Id.* § 7-1-37(d).

23. *Id.*

financial institution if he or she has examined such financial institution in the preceding 12 months.”<sup>24</sup> However, if the examiner wishes to borrow from a financial institution which he or she has examined in the past five years, the examiner must obtain written permission from the Commissioner.<sup>25</sup> The provisions in this section are designed to further combat the conflict of interest that exists between the financial institutions and the banking regulators in their professional and consumer capacities.<sup>26</sup> The provisions exempt from regulation the type of transactions that are not susceptible to self-dealing and give personnel some ability to borrow minimally for household needs.<sup>27</sup>

Code section 7-1-43, relating to fees<sup>28</sup> collected and appropriations, is amended to provide that the fees are to be deposited with the Office of the Treasury and Fiscal Services rather than the Department of Administrative Services.<sup>29</sup>

As amended, Code section 7-1-61 authorizes the Department to promulgate rules and regulations related to the organizational structure and powers of financial institutions.<sup>30</sup> The Act enumerates factors to be considered by the Commissioner when exercising discretion, including: (1) whether the financial institution can exercise additional powers in a safe and sound manner; (2) whether national banks operating under federal law are authorized to conduct the activity; (3) whether nonbanking entities that provide financial services in Georgia are authorized to conduct the activity; and (4) whether any other Georgia law specifically disallows the activity.<sup>31</sup>

The dual banking system of state and federally chartered and regulated banks has prompted the regulatory agencies to create an atmosphere of greater cooperation and uniformity between

24. *Id.* § 7-1-37(e).

25. *Id.*

26. Bechtel Interview, *supra* note 2.

27. Bechtel Interview, *supra* note 2.

28. “Fees” in this context include monetary penalties levied upon financial institutions by Department agents. Bechtel Interview, *supra* note 2.

29. O.C.G.A. § 7-1-43 (Supp. 1995).

30. *Id.* § 7-1-61(a).

31. *Id.* § 7-1-61(b). This section is important because any financial institution that is subject to the regulation of the Department must seek approval from the Department before conducting a new activity. *See id.*

state and federal banks.<sup>32</sup> The goal is to achieve a level playing field and to allow state and federally chartered banks to offer competitive financial services.<sup>33</sup> The changes to Code section 7-1-61 also acknowledge that many nonbank companies offer services that compete with regulated financial services; therefore, one of the factors that the Commissioner must now consider in determining whether to grant a bank the requested approval is whether nonregulated companies are offering such services.<sup>34</sup>

Subsection (a) of Code section 7-1-64 provides that examinations of all financial institutions must take place at least once a year and may occur more frequently if necessary or desirable.<sup>35</sup> Further, at least once a year, the examination's scope must include a comprehensive review of the accounts, records, and affairs of the institution.<sup>36</sup> The Act grants the Department discretion to reduce the frequency and scope of examinations pursuant to the following goals:

- (1) To achieve cooperation and coordination with other state and federal regulatory authorities . . . ;
- (2) To assure that appropriate time and attention are devoted to the supervision of troubled financial institutions; or
- (3) To minimize the examination burden on well-managed financial institutions which have consistently been operated with safe and sound banking practices.<sup>37</sup>

Code section 7-1-64 establishes a regulatory atmosphere that is conducive to cooperation between the various regulatory agencies involved in the activities of a bank.<sup>38</sup> The intent is to share resources between the Department and other regulatory agencies, such as the Federal Deposit Insurance Corporation.<sup>39</sup>

32. Bechtel Interview, *supra* note 2.

33. Bechtel Interview, *supra* note 2.

34. Bechtel Interview, *supra* note 2.

35. O.C.G.A. § 7-1-64(a) (Supp. 1995).

36. *Id.*

37. *Id.* § 7-1-64(b). With regard to the first goal of achieving coordination between federal and state authorities, the Act specifically mentions, as a nonexclusive example, the "examination programs of bank or bank holding companies having multistate operations." *Id.* § 7-1-64(b)(1).

38. Bechtel Interview, *supra* note 2.

39. Bechtel Interview, *supra* note 2.

Code section 7-1-68 requires financial institutions to publish summaries of their various activities and penalizes noncompliance.<sup>40</sup> The Act gives the Department discretion to waive publication of summary reports if the institution makes the reports readily available to the public.<sup>41</sup>

Code section 7-1-71 is amended to provide that the Department has “the right to require the immediate suspension from office of any director, officer, or employee” who has conducted his or her financial affairs or the affairs of any company in which he or she has a controlling interest in a fiscally irresponsible or unlawful fashion.<sup>42</sup> Formerly, the officer, director, or employee would have to voluntarily file for bankruptcy before the Department could take action.<sup>43</sup> The amended provision allows the Department to take corrective action against directors, officers, or employees at an earlier stage, perhaps preventing some of the financial harm to the institution.<sup>44</sup> The goal is to distance financially irresponsible people from bank management.<sup>45</sup> In addition, the provision alleviates a potential legal problem by not discriminating against employees based on the status of bankruptcy.<sup>46</sup>

The Act adds Code section 7-1-78 providing:

- (a) The department may, at its discretion, enter into cooperative or reciprocal agreements with other state or federal regulatory authorities and may furnish to such authorities information contained in the examinations, reports, and institution files, provided the information is to be used for confidential, regulatory purposes.
- (b) Furnishing information as permitted by this Code section shall not be deemed to change the confidential character of the information furnished.
- (c) The department may accept reports of examination and other records from such authorities in lieu of conducting its own examination.
- (d) The department may take such actions as are reasonably necessary, either independently or with such regulatory

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40. O.C.G.A. § 7-1-68 (Supp. 1995).

41. *Id.*

42. *Id.* § 7-1-71(a).

43. 1983 Ga. Laws 602 (formerly found at O.C.G.A. § 7-1-71 (1989)).

44. Bechtel Interview, *supra* note 2.

45. Bechtel Interview, *supra* note 2.

46. Bechtel Interview, *supra* note 2.

agencies, to facilitate the regulation of financial services providers doing business in this state.<sup>47</sup>

This section reflects the new interstate banking environment under the Riegle-Neal Interstate Act.<sup>48</sup> The Riegle-Neal Act permits full interstate banking by both domestic and foreign banking entities.<sup>49</sup> The burden is now on the states to respond by adjusting their state regulations.<sup>50</sup> One of the primary goals of the dual banking system is that a change in the regulatory structure of one of the systems prompts a similar change in the other system so that the playing field remains level.<sup>51</sup>

### *Community Investments*

The Act amends Code section 7-1-260 to allow financial institutions to make loans and investments for community development as well as for charitable purposes.<sup>52</sup> This provision is geared towards increasing community reinvestment by financial institutions.<sup>53</sup>

Code section 7-1-261 outlines additional operating powers that are granted to financial institutions.<sup>54</sup> The Act amends this section to allow financial institutions to enter into an agency relationship as defined in Code section 7-1-4.<sup>55</sup> Agency relationships have become increasingly popular among banks.<sup>56</sup> Banks render many services acting as agents for other companies, particularly in security and annuity activities.<sup>57</sup> These activities are now clearly brought within the regulatory ambit of this Act.<sup>58</sup>

Code section 7-1-288, relating to a bank's corporate stock and securities, is amended by adding paragraph (4) to subsection

47. O.C.G.A. § 7-1-78(a)-(d) (Supp. 1995).

48. Bechtel Interview, *supra* note 2; *see* Riegle-Neal Act, *supra* note 1, §§ 101, 104.

49. Bechtel Interview, *supra* note 2.

50. Bechtel Interview, *supra* note 2.

51. Bechtel Interview, *supra* note 2.

52. O.C.G.A. § 7-1-260(7) (Supp. 1995).

53. Bechtel Interview, *supra* note 2.

54. O.C.G.A. § 7-1-261 (Supp. 1995).

55. *Id.* § 7-1-4(1.5).

56. Bechtel Interview, *supra* note 2.

57. Bechtel Interview, *supra* note 2.

58. Bechtel Interview, *supra* note 2.

(c).<sup>59</sup> This provision allows a bank to invest in shares of stock or partnership interests of business entities whose primary business is promoting “the public welfare or community development by engaging in the development of low and moderate-income housing, job training and job placement programs, credit counseling, public education regarding financial matters, small business development, and other similar purposes.”<sup>60</sup> However, the bank’s ability to invest in these types of businesses is subject to regulation by the Department to ensure that such activities conform to sound banking practices.<sup>61</sup> This amendment provides incentives to financial institutions to reinvest in the communities in which they are located.<sup>62</sup>

### *Fiduciary Funds*

Code section 7-1-289 lists types of deposits that a financial institution may secure by granting security interests in its assets.<sup>63</sup> Prior to the Act, unless the security interest was given to secure one of the specified types of deposits, it was not allowed.<sup>64</sup> The Act amends this section to allow the Department to give written approval to a financial institution to secure other, unlisted types of deposits.<sup>65</sup> In addition, the Act provides that a bank can pledge or otherwise grant security in its assets to secure deposits of “[i]ts own fiduciary funds or the fiduciary funds of an affiliate. In either case, the funds shall be deposited with the pledging institution and held in its commercial department.”<sup>66</sup> This amendment to Code section 7-1-289 reflects the change to Code section 7-1-311.

Prior to the Act, Code section 7-1-311 provided that a trust company, acting as a fiduciary, could keep fiduciary funds awaiting investment or distribution in its own commercial department.<sup>67</sup> The Act amends this Code section to allow funds

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59. O.C.G.A. § 7-1-288(c)(4) (Supp. 1995).

60. *Id.*

61. *Id.*

62. Bechtel Interview, *supra* note 2.

63. 1974 Ga. Laws 705, § 1, at 800 (formerly found at O.C.G.A. § 7-1-289 (1989)).

64. *See id.*

65. O.C.G.A. § 7-1-289(a)-(b) (Supp. 1995).

66. *Id.* § 7-1-289(a)(6).

67. 1988 Ga. Laws 1494 & 1974 Ga. Laws 705 (formerly found at

to be kept in the commercial department of an affiliate as provided in Code section 7-1-289.<sup>68</sup>

Code section 7-1-491 provides that a bank or trust company shall not make loans or extend financing to an officer or director on preferential terms.<sup>69</sup> In determining whether the loans are preferential, the terms, rates, and conditions will be compared to those of loans offered to disinterested borrowers.<sup>70</sup> In addition, the Act requires banks to adopt approval procedures for such loans in order to minimize any likelihood of abuse by bank insiders.<sup>71</sup>

### *Merger and Consolidation*

Prior to the Act, parties were required to file with the Department the articles of merger or consolidation and pay a filing fee.<sup>72</sup> The Act amends Code section 7-1-532 to require that a copy of the notice of merger or consolidation accompany the articles of merger or consolidation in seeking the Department's approval.<sup>73</sup> The notice of merger or consolidation may be included in the articles themselves or may be set forth in a "letter or other instrument executed by an officer or any person authorized to act on behalf of such bank or trust company."<sup>74</sup> To further generate notice to the public, the parties to the merger or consolidation must mail or deliver notice of the merger or consolidation to the publisher of the official organ of the county in which the registered main office of each party to the merger or consolidation is located.<sup>75</sup> This must occur no later than the next business day after the filing of the articles with the Department.<sup>76</sup> The notice must contain the names of the parties to the proposed merger or consolidation and the proposed name

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O.C.G.A. § 7-1-311 (1989)).

68. O.C.G.A. § 7-1-311(3) (Supp. 1995).

69. *Id.* § 7-1-491.

70. *Id.*

71. *Id.*

72. 1974 Ga. Laws 705 (formerly found at O.C.G.A. § 7-1-532(a) (1989)).

73. O.C.G.A. § 7-1-532(c) (Supp. 1995). Furthermore, this change is reflected in O.C.G.A. § 7-1-534, relating to the approval of consolidation or merger by the Department. *Id.* § 7-1-534.

74. *Id.* § 7-1-532(c).

75. *Id.* § 7-1-532(d).

76. *Id.*

of the resulting bank or trust company.<sup>77</sup> In addition, the notice must designate the place where the articles can be examined by the public.<sup>78</sup> The amended Code section also provides that notice must be published once a week for two consecutive weeks beginning ten days after the newspaper receives the request for the publication.<sup>79</sup>

Code section 7-1-533 is amended to delete subsection (b), concerning the publication of notice requirement,<sup>80</sup> because this issue is now addressed in Code section 7-1-532.<sup>81</sup> Additionally, Code section 7-1-533, as amended, no longer requires parties to file with the Department a newspaper publisher's affidavit that the publication requirement has been met.<sup>82</sup>

In addition, Code section 7-1-552, regarding filings of notice, is amended to ensure consistency with changes made to Code sections 7-1-532 to -534.<sup>83</sup> Many of these provisions requiring notice have been amended to alleviate some of the unnecessary regulatory burden while safeguarding the purpose behind the notice provisions.<sup>84</sup> These sections were amended to be more consistent with Georgia's corporate code provisions on mergers.

### *Banks and Bank Holding Companies*

Code section 7-1-590, concerning the Department's regulatory power over the representative offices of out-of-state banks, is amended to provide definitions for "bank," "bank holding company," "domicile," "loan production office," and "representative office."<sup>85</sup> Under the Act, an entity receiving deposits or performing any transaction, directly or through an affiliate or agent, relative to a deposit account, is presumed to be engaging in a "banking business."<sup>86</sup>

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77. *Id.*

78. *Id.*

79. *Id.* § 7-1-532(e).

80. Compare 1989 Ga. Laws 1266 (formerly found at O.C.G.A. § 7-1-533 (1989)) with O.C.G.A. § 7-1-533 (Supp. 1995).

81. O.C.G.A. § 7-1-532(c)-(e) (Supp. 1995).

82. Compare *id.* with 1989 Ga. Laws 1257 (formerly found at O.C.G.A. § 7-1-533(b) (1989)).

83. O.C.G.A. § 7-1-552 (Supp. 1995).

84. Bechtel Interview, *supra* note 2.

85. O.C.G.A. § 7-1-590(1)-(4) (Supp. 1995).

86. *Id.* § 7-1-590(1).

The Act adds Code section 7-1-591, allowing a bank holding company, domiciled in Georgia and operating under Georgia law or the laws of the United States, to establish a representative office anywhere in Georgia.<sup>87</sup> In addition, a nonbank subsidiary or an agent of the bank holding company may establish a representative office anywhere in Georgia.<sup>88</sup> However, the Act allows a bank “domiciled in this state and operating under its laws or the laws of the United States or a subsidiary or agent of said bank . . . [to] establish a representative office anywhere except where it is authorized to carry on a banking business.”<sup>89</sup>

The Act adds Code section 7-1-592, which applies to banks and bank holding companies that are domiciled *outside* Georgia, operate under the laws of another state, and do not maintain a banking office in Georgia.<sup>90</sup> These foreign institutions may establish representative offices anywhere in Georgia.<sup>91</sup>

The Act adds Code section 7-1-593, providing that a bank or bank holding company that does establish a representative office in Georgia must register with the Department annually.<sup>92</sup> These banking entities must register on departmental forms and pay an annual registration fee.<sup>93</sup> Additionally, these entities must list the names of each representative office that is established, the street address, the nature of the business that is transacted at the office, and any other information the Department may require.<sup>94</sup> Furthermore, the Department may review the operations of any representative office annually, or with greater frequency as the Department deems necessary, in order to ensure that the representative office does not transact banking business.<sup>95</sup>

Additionally, Code section 7-1-594 is added to require banks and bank holding companies that establish agency relationships

87. *Id.* § 7-1-591. The section applies to bank holding companies, not banks themselves. *See id.*

88. *Id.* “Representative offices” are nonbanking offices which may not be located concurrently with a banking office. *Id.*

89. *Id.*

90. *Id.* § 7-1-592.

91. *Id.*

92. *Id.* § 7-1-593.

93. *Id.* § 7-1-593(a).

94. *Id.*

95. *Id.* § 7-1-593(b).

to register with the Department.<sup>96</sup> These entities must “provide the name of the agent, the street address and activities of the agent, a copy of the agency agreement, and such other information as the department may require.”<sup>97</sup> Additionally, the Act requires that the agency relationship be “consistent with safe and sound banking practices and protection of the consumers” of Georgia.<sup>98</sup> The agency agreement must provide for the “orderly resolution of customer complaints, record keeping, [and] liability of the respective parties in the agency relationship.”<sup>99</sup> The agreement must conform to Georgia’s law of principal-agent relationships and all banking laws.<sup>100</sup> The agreement must also provide for disclosure to customers of all pertinent information.<sup>101</sup>

*ATMs, Cash Dispensing Machines, and Point-of-Sale Terminals*

Code section 7-1-603 is amended to provide definitions of “automated teller machines” (ATMs), “cash dispensing machines,” and “point-of-sale terminals.”<sup>102</sup> These three definitions are not meant to “include personal communication devices such as telephones, computer terminals, modems, and other similar devices, which are not accessible to the general public but are intended for use by a single bank customer.”<sup>103</sup> Further, the General Assembly expressly stated that these changes were not intended to limit a bank’s ability to use these personal communication devices.<sup>104</sup> The Department may further define the terms “ATM,” “cash dispensing machine,” and “point-of-sale terminal” as long as the definitions are consistent with the objectives of Code section 7-1-3.<sup>105</sup>

The Act also provides that a bank may operate certain additional locations, which are not considered a bank office or bank facility, without obtaining approval from the

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96. *Id.* § 7-1-594.

97. *Id.* § 7-1-594(a).

98. *Id.* § 7-1-594(b).

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* § 7-1-603.

103. *Id.* § 7-1-603(a).

104. *Id.*

105. *Id.*

Department.<sup>106</sup> These additional locations will be considered an “extension of the existing parent bank, branch bank, bank office, or bank facility.”<sup>107</sup>

The Act provides that ATMs must be unstaffed and located in a county “in which a parent bank, branch bank, bank office, or bank facility is lawfully located.”<sup>108</sup> Additionally, these machines may be operated by a bank individually or jointly on a cost-sharing basis with other banks or financial institutions.<sup>109</sup> A cash dispensing machine may be operated anywhere in Georgia by any bank.<sup>110</sup> A bank may operate such machines on an individual or joint basis.<sup>111</sup> Similarly, a point-of-sale terminal may be located anywhere in Georgia.<sup>112</sup>

### *Credit Unions*

Code section 7-1-634, relating to the amendment of articles of incorporation and bylaws of credit unions, is amended to eliminate the former requirement that the Department file any approved amendments with the Secretary of State.<sup>113</sup> The Department now simply maintains a permanent record of any approved amendments.<sup>114</sup>

### *Licensing Requirements*

Code section 7-1-684, concerning the investigation of applicants, granting of licenses, single licenses for issuers, and subsidiary sellers, is amended to provide that a license to engage in the business of selling and issuing checks in Georgia shall remain in force through its expiration date.<sup>115</sup> Previously, the license would have expired at the end of the calendar year.<sup>116</sup>

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106. *Id.* § 7-1-603(b).

107. *Id.*

108. *Id.* § 7-1-603(c)(3).

109. *Id.*

110. *Id.* § 7-1-603(c)(4).

111. *Id.*

112. *Id.* § 7-1-603(c)(5).

113. *Id.* § 7-1-634.

114. *Id.*

115. *Id.* § 7-1-684. Additionally, the Act amends Code section 7-1-703 to conform to this language. *Id.* § 7-1-703. Furthermore, it eliminates the \$250 annual license fee. *Id.*

116. *Compare id. with* 1990 Ga. Laws 739 (formerly found at O.C.G.A. § 7-

Code section 7-1-685, relating to the renewal of licenses and annual license fees, is amended to provide that a license may be renewed for a period to be established by the Department, rather than for the previously prescribed twelve-month period.<sup>117</sup> Additionally, the renewal application need no longer be filed on or after June 1 of the year in which the existing license expires.<sup>118</sup> Likewise, renewal licenses no longer go into effect in January of the year following their renewal.<sup>119</sup> This section alleviates the administrative burden placed on the Department by allowing the Commissioner to stagger the influx of renewal applications.

Code section 7-1-702, concerning background investigation, effect of past convictions, conviction data, license posting requirements, and the terms of licenses, is amended to provide that a license shall remain in effect through its expiration date, unless it has been earlier suspended, surrendered, or revoked by the Department.<sup>120</sup>

Code section 7-1-716, relating to effect, renewal, and revocation of licenses and permissible activities, is amended to conform to the preceding Code sections relating to license renewals.<sup>121</sup> The Act provides that licenses approved by the Department for international banking business shall remain in force for a period of time determined by the Department.<sup>122</sup> The Act eliminates the requirement that licenses must be displayed conspicuously in the place of business at all times.<sup>123</sup>

Code section 7-1-721, relating to international representative offices, is amended to provide that each international representative office located in Georgia must register with the Department and that the registration must be filed in accordance with Department regulations.<sup>124</sup> The registration must list the

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1-703 (Supp. 1994)).

117. O.C.G.A. § 7-1-685 (Supp. 1995).

118. *Id.*

119. *Id.*

120. *Id.* § 7-1-702(e).

121. *Id.* § 7-1-716(a); *see also id.* §§ 7-1-684 to -685, -702 to -703.

122. *Id.* § 7-1-716(a).

123. *Compare id. with* 1974 Ga. Laws 705 (formerly found at O.C.G.A. § 7-1-716 (1989)).

124. O.C.G.A. § 7-1-721 (Supp. 1995).

name, telephone numbers, and facsimile numbers of all local representatives.<sup>125</sup>

### *Restrictions on Purchasing Mortgages*

Code section 7-1-1002 is amended to prohibit, on or after July 1, 1995, any person from knowingly purchasing mortgage loans from a mortgage broker or mortgage lender who is neither licensed nor exempt from licensing or registration.<sup>126</sup> This provision also requires the Department to provide information regarding approval or revocation of licenses.<sup>127</sup> There was concern over the provision in the original bill relating to the liability of parties that purchase mortgage loans from unlicensed brokers.<sup>128</sup> The bill, as introduced, prohibited a person, including a corporation, from purchasing a mortgage loan from an unlicensed broker.<sup>129</sup> The substitute bill that emerged from the Senate Committee on Banking and Financial Institutions contained new language providing that individuals who purchase five or fewer loans in any one year are exempt from this prohibition.<sup>130</sup>

In 1994, the General Assembly passed an act creating Code sections 7-7-1000 to -1020.<sup>131</sup> These sections address the licensure and regulation of mortgage lenders.<sup>132</sup> In 1995, the General Assembly, to further prohibit the activities of nonlicensed mortgage lenders, targeted the conduct of third parties who purchased mortgage loans from unlicensed brokers.<sup>133</sup> The Act does not punish those third parties who

125. *Id.*

126. *Id.* § 7-1-1002. "Persons" is defined by Code section 7-1-1001 and includes a corporation for purposes of § 7-1-1002. *Id.* Persons purchasing five or fewer mortgage loans per calendar year are exempt from § 7-1-1002. *Id.*

127. *Id.*

128. SB 103, as introduced, 1995 Ga. Gen. Assem.; Bechtel Interview, *supra* note 2.

129. SB 103, as introduced, 1995 Ga. Gen. Assem.; Bechtel Interview, *supra* note 2.

130. SB 103 (SCS), 1995 Ga. Gen. Assem.

131. *See* 1994 Ga. Laws 570 (codified at O.C.G.A. §§ 7-7-1000 to -1020 (Supp. 1995)).

132. *Id.*

133. O.C.G.A. § 7-1-1002 (Supp. 1995).

unknowingly purchase mortgages from unlicensed brokers.<sup>134</sup> However, this section requires the Department to provide and make available any information regarding the approval or revocation of licenses, thus making it easier for those interested in obtaining a mortgage to determine whether their broker is licensed.<sup>135</sup>

The Act amends Code section 7-1-1011, which provides for a fee of \$6.50 upon the closing of every mortgage loan.<sup>136</sup> All mortgage loans are subject to regulation, regardless of whether they are closed by a licensed mortgage lender or broker.<sup>137</sup> This provision highlights the General Assembly's intent that the costs of administering these borrower-protective provisions be borne directly by borrowers and not indirectly through lenders.<sup>138</sup>

Lastly, Code section 7-1-1018 is amended to provide that, in the case of an unlawful purchase of a mortgage loan, a cease and desist order issued to a purchaser shall constitute knowledge that the mortgage broker is not licensed.<sup>139</sup> This provision is intended to bolster the new restriction on purchasers of mortgage loans in Code section 7-1-1002.<sup>140</sup>

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134. *Id.*

135. *See id.*; Bechtel Interview, *supra* note 2.

136. O.C.G.A. § 7-1-1011(a)(2) (Supp. 1995).

137. *Id.* § 7-1-1011(a).

138. Bechtel Interview, *supra* note 2.

139. O.C.G.A. § 7-1-1018 (Supp. 1995).

140. Bechtel Interview, *supra* note 2.