

House Bill 143 (AS PASSED HOUSE AND SENATE)

By: Representatives Williamson of the 115<sup>th</sup>, Morris of the 156<sup>th</sup>, Frazier of the 126<sup>th</sup>, Williams of the 119<sup>th</sup>, and Hilton of the 95<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to  
2 financial institutions, so as to provide for definitions; to revise subpoena powers for the  
3 Department of Banking and Finance; to provide for the regulation of persons performing  
4 services for financial institutions; to provide for discretion of the department to direct  
5 financial institutions to restore capital stock to prevent deficiency; to provide for the charging  
6 of a convenience fee by a financial institution or mortgage lender; to provide for approval  
7 procedures by certain bank officials when issuing obligations in excess of the statutory  
8 maximum to one person or corporation; to provide for the types of transactions which are  
9 exempt from calculation of the statutory maximum to one person or corporation; to provide  
10 for the transaction of business by banks on Sundays; to provide for procedures for the  
11 receivership of a trust company; to provide for minimum amount of capital to be maintained  
12 by a trust company; to prohibit certain pledges or liens by a trust company; to provide for the  
13 receipt of deposits and rental of safe-deposit boxes by certain minors; to provide for  
14 requirements for a bank or trust company to issue subordinated securities; to provide for the  
15 removal of directors and vacancies within the board of directors of banks and trust  
16 companies; to provide for the registration and examination of bank holding companies; to  
17 provide for requirements for resulting banks from an interstate merger transaction with an  
18 out-of-state bank; to provide for powers of credit unions; to provide for membership in credit  
19 unions; to provide for duties of supervisory committees and comprehensive audits of credit  
20 unions; to provide for merger and conversion of credit unions; to provide for the acceptance  
21 of proof of required surety bonds by the Nationwide Multistate Licensing System and  
22 Registry; to provide for the minimum bond to be held by a mortgage broker and mortgage  
23 lender; to provide for power of the department to conduct on-site examinations of licensees  
24 and registrants; to amend Code Section 13-1-15 of the Official Code of Georgia Annotated,  
25 relating to the charging of convenience fees by a lender or merchant, so as to allow for such  
26 fees on loans made pursuant to Chapter 1 of Title 7; to amend Chapter 12 of Title 53 of the  
27 Official Code of Georgia Annotated, relating to trusts, so as to revise a definition; to provide  
28 for the authority of a foreign entity to act in a fiduciary capacity; to prohibit the establishment

29 of a place of business by a foreign entity acting as a fiduciary not transacting business in the  
 30 state; to provide for a filing statement with the Secretary of State and appointment of an  
 31 agent for service by a foreign entity; to provide for effective dates; to provide for related  
 32 matters; to repeal conflicting laws; and for other purposes.

33 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

34 **SECTION 1.**

35 Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial  
 36 institutions, is amended in Code Section 7-1-4, relating to definitions, by revising paragraphs  
 37 (24) and (35) as follows:

38 ~~"(24) 'Net assets' means the amount by which the total assets exceed the total debts of a~~  
 39 ~~financial institution. Total assets shall include but not be limited to both tangible and~~  
 40 ~~intangible assets, including prepaid expenses, prepaid taxes, and accrued income using~~  
 41 ~~book values determined in accordance with generally accepted accounting principles~~  
 42 ~~applicable to financial institutions. Total assets shall not include intangible assets in the~~  
 43 ~~form of good will, core deposit intangibles, or other intangible assets related to the~~  
 44 ~~purchase, acquisition, or merger of a bank charter. Total debts shall include all liabilities,~~  
 45 ~~other than contingent liabilities, including accrued expenses, deferred or unearned~~  
 46 ~~income, and valuation reserves, all determined in accordance with generally accepted~~  
 47 ~~accounting principles applicable to financial institutions~~ Reserved."

48 ~~"(35) 'Statutory capital base' means the sum of the capital stock, paid-in capital,~~  
 49 ~~appropriated retained earnings, and capital debt of a bank or trust company less any~~  
 50 ~~amount of good will, core deposit intangibles, or other intangible assets related to the~~  
 51 ~~purchase, acquisition, or merger of a bank charter or accumulated deficit (negative~~  
 52 ~~retained earnings) common equity tier 1 capital, as defined by applicable federal law, and~~  
 53 ~~the allowance of loan and lease losses, as defined by applicable federal law, as reported~~  
 54 ~~in the bank's most recent Consolidated Report of Condition and Income; provided,~~  
 55 ~~however, that the department may enact regulations to phase in the revision to this~~  
 56 ~~definition for those banks that will have a decreased statutory capital base as of July 1,~~  
 57 ~~2017. If significant capital changes occur after the filing of the Consolidated Report of~~  
 58 ~~Condition and Income which causes the common equity tier 1 capital to increase or~~  
 59 ~~decrease by 5 percent or more, then the statutory capital base will be immediately~~  
 60 ~~recalculated at the time of the capital change and it will be effective until the filing of the~~  
 61 ~~next Consolidated Report of Condition and Income."~~

62 **SECTION 2.**

63 Said chapter is further amended in Code Section 7-1-66, relating to method of examination,  
 64 investigations, special examiners, and subpoenas issued by the Department of Banking and  
 65 Finance, by revising subsections (b) and (c) as follows:

66 "(b) Officials authorized to make examinations or investigations shall have the power and  
 67 authority to administer oaths and to examine under oath any person (including any officer,  
 68 director, agent, attorney, member, or employee of any financial institution) whose  
 69 testimony may be relevant to the examination or investigation. Such officials shall have  
 70 the authority and power to compel the appearance and attendance of any such person and  
 71 the production by such person of pertinent books and papers, including books and papers  
 72 to which the person has access because of his position with a financial institution, and for  
 73 such purposes shall have the authority to issue a subpoena requiring the appearance and  
 74 attendance of any such person or for the production of any pertinent books and papers.

75 (c) ~~If any person shall fail or refuse to appear or to testify or to produce books and papers~~  
 76 ~~after being ordered to do so pursuant to this Code section, such failure or refusal may be~~  
 77 ~~reported in writing to the principal court; and said court shall thereupon cause a subpoena~~  
 78 ~~to be issued requiring such person to attend, testify, and produce books and papers. For~~  
 79 ~~failure to obey such subpoena, the person may~~ obey an order or subpoena issued by the  
 80 department, a court of appropriate jurisdiction, upon application by the department, may  
 81 issue an order requiring such person to appear before the court to show cause as to why he  
 82 or she should not be adjudged in contempt and punished accordingly for refusal to obey the  
 83 subpoena."

84 **SECTION 3.**

85 Said chapter is further amended by revising Code Section 7-1-72, relating to regulation of  
 86 persons performing services for financial institutions, as follows:

87 "7-1-72.

88 (a) Notwithstanding any other provisions of law to the contrary and consistent with the  
 89 objectives of this chapter as set forth in Code Section 7-1-3 and subject to the procedures  
 90 provided in regulations of the department, a financial institution may provide financial  
 91 services to its customers either directly or through employment of duly licensed persons,  
 92 provided that such financial institution or its licensed employee or agent has qualified  
 93 under other laws otherwise applicable to other providers of such financial services.

94 (b) Where financial services are being performed by a person or corporation for a financial  
 95 institution, such person or corporation shall be subject to:

- 96 (1) Examination and investigation by the department ~~relative to character, reputation, and~~  
 97 financial stability to the same extent as if the services were performed by the financial  
 98 institution on its own premises; and
- 99 (2) Regulation by the department in regard to such services to the same extent as if such  
 100 services were being performed by the financial institution for its own internal benefit or  
 101 as an extension of the range of financial services products offered to customers of the  
 102 financial institution; and
- 103 (3) All enforcement proceedings made available to the department in this title.
- 104 (c) In the event of conflicting statutory responsibilities, except as otherwise provided by  
 105 law, the department shall not grant licenses to providers of financial services to or through  
 106 financial institutions. The department shall be the responsible authority in reviewing,  
 107 authorizing, or otherwise regulating, consistent with this chapter, the contractual  
 108 relationship entered into by financial institutions for the provision of such services or  
 109 incidental to application for further licensing.
- 110 (d) For purposes of this Code section, 'financial services' shall include, but is not limited  
 111 to, business and consumer financial record keeping, investments, planning and advisory  
 112 assistance, surety, brokerage, ~~information,~~ data processing, electronic fund transfers,  
 113 information services, and protective services performed for a financial institution which are  
 114 normally performed by the financial institution for its own benefit or provided to the  
 115 customers of the financial institution incidental to its conduct of the banking business. The  
 116 department may further define 'financial services' to include other activities of a financial  
 117 nature which it determines to be consistent with the safe and sound operation of a banking  
 118 business, not otherwise in violation of this chapter, and in the public interest.
- 119 (e) The department may, by regulation, prescribe fees to be paid for examinations of a  
 120 person or corporation that performs financial services for a financial institution.
- 121 (f) Notwithstanding Code Section 7-1-70, the department may furnish a copy of any report  
 122 of a financial service provider prepared by the department to the financial institution  
 123 serviced by the financial service provider."

124 **SECTION 4.**

125 Said chapter is further amended in Code Section 7-1-91, relating to orders by the department,  
 126 enforcement, and civil penalties, by revising subsection (a) as follows:

127 "(a) Whenever it shall appear to the department that the capital stock of a financial  
 128 institution has been reduced below the minimum required by law or below the amount  
 129 required by its articles ~~or that its net assets are less than the amount of its capital stock,~~ the  
 130 department may issue a written order directing such corporation to restore the deficiency  
 131 within such period as shall be specified in the order."

132 **SECTION 5.**

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

134 "7-1-239.6.

135 A financial institution or mortgage lender, as such term is defined by Code Section  
136 7-1-1000, may charge a convenience fee provided that such fee is permissible in  
137 accordance with Code Section 13-1-15. For purposes of this Code section, the term  
138 'convenience fee' means any additional amount imposed to a consumer at the time of a  
139 transaction for the election of making a payment by electronic means. A convenience fee  
140 may include, but is not limited to, any fee charged for payment to an account with the  
141 assistance of a live representative or agent of the financial institution or mortgage lender,  
142 by telephone, using a voice response unit, or other electronic means. A convenience fee  
143 does not include a discount offered by a lender or merchant to a person for payment by  
144 cash, check, or similar means."

145 **SECTION 6.**146 Said chapter is further amended by revising Code Section 7-1-285, relating to limits on  
147 obligations of one person or corporation relative to banks, as follows:148 "7-1-285.

149 (a) As used in this Code section, the term:

150 (1) 'Credit exposure as a counterparty in derivative transactions' means an amount that  
151 the bank reasonably determines, pursuant to a methodology acceptable to the department  
152 under the terms of the derivative or otherwise, would be its loss if a counterparty were  
153 to default on the date of determination, taking into account any netting and collateral  
154 arrangements and any guarantees or other credit enhancements; provided, however, that  
155 the bank may elect to determine credit exposure on the basis of such other method of  
156 determining credit exposure as may be permitted by the department and the bank's  
157 primary federal regulator.

158 (2) 'Derivative transaction' includes any transaction that is an agreement, contract, note,  
159 option, swap, or warrant that is based, in whole or in part, on the value of, any interest in,  
160 or any quantitative measure or the occurrence of any event relating to, one or more  
161 commodities, securities, currencies, interest or other rates, indices, or other assets.

162 (3) 'Person or corporation' includes, but is not limited to, an individual, corporation,  
163 partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, or  
164 unincorporated organization. The term 'person or corporation' shall not include the  
165 affiliates of a bank or a clearing organization registered or exempt from registration with  
166 the Commodity Futures Trading Commission, the Securities and Exchange Commission,  
167 any other federal agency, or any successor agencies.

168 (a.1) A bank shall not at any time:

169 (1) Make loans to any one person or corporation;

170 (2) Have obligations owing to it from any one person or corporation as a result of  
171 purchasing or discounting evidences of indebtedness or agreements for the payment of  
172 money; or

173 (3) Have credit exposure as a counterparty in derivative transactions with any one person  
174 or corporation,

175 where the aggregate of such loans, obligations, and credit exposure together exceeds 15  
176 percent of the statutory capital base of the bank at the time of issuance of a binding  
177 commitment unless each loan, discount, purchase, or derivative transaction in excess of  
178 such 15 percent limit is approved in advance by the board of directors or a committee  
179 authorized to act for it subject to the provisions set forth in subsections (b) and (c) of this  
180 Code section. Approval by the board of directors or authorized committee shall be  
181 recorded in the formal minutes of the actions of the board or its committee by name of  
182 borrower, amount of loan, maturity of loan, general type of collateral, and such other  
183 information as required pursuant to the rules and regulations of the department. Any action  
184 required by this subsection may be taken pursuant to Code Section 7-1-483, provided that  
185 the minutes of the proceedings of the board or of the committee reflect such action and  
186 each director taking such action signs the minutes reflecting such action by no later than  
187 the next regular meeting of the board or committee attended by such director.

188 (b) Except as provided in subsection (c) of this Code section, a bank shall not directly or  
189 indirectly make loans, have obligations, or have credit exposure as a counterparty in  
190 derivative transactions to any one person or corporation which in aggregate exceed 15  
191 percent of the statutory capital base of the bank at the time of issuance of a binding  
192 commitment unless the entire amount of such loans, obligations, and credit exposure in  
193 derivative transactions is secured by good collateral or other ample security and does not  
194 exceed 25 percent of the statutory capital base at the time of issuance of a binding  
195 commitment. Except as otherwise indicated in subsection (c) of this Code section, the  
196 purchase or discount of agreements for the payment of money or evidences of indebtedness  
197 shall be regarded as indirect loans to the person or corporation receiving the proceeds of  
198 such transactions. In estimating the legal lending limit for any one person or corporation,  
199 loans to related corporations, partnerships, and other entities shall be combined subject to  
200 regulations established by the department.

201 (c) The limitations of subsection (b) of this Code section shall not apply to:

202 (1) ~~Obligations arising from the purchase or discount of drafts drawn in good faith~~  
203 ~~against actually existing values or commercial or business paper actually owned by the~~

204 person negotiating the paper to the extent of 25 percent of the statutory capital base of the  
 205 bank;

206 ~~(2) Obligations arising from the bona fide purchase of commercial or business paper,~~  
 207 ~~subject to restrictions which the department may impose by regulation, taken in sale or~~  
 208 ~~service transactions incident to a business where the party to whom the goods or services~~  
 209 ~~are provided is obligated on the paper;~~

210 ~~(3) Obligations in the form of bona fide loans upon the security of agricultural,~~  
 211 ~~manufactured, or industrial products or livestock (or documents of title covering such~~  
 212 ~~property) for which there is a ready sale in open market, provided no more than 80~~  
 213 ~~percent of the market value of such products is loaned or advanced thereon, the bank has~~  
 214 ~~the right to demand additional collateral to maintain this ratio and does so maintain it, and~~  
 215 ~~the bank's interest in such collateral is fully protected by insurance against loss by fire~~  
 216 ~~and other standard hazards; and provided, further, that such obligations shall qualify for~~  
 217 ~~exemption for not more than ten months if secured by nonperishable staples and for not~~  
 218 ~~more than six months if secured by frozen or refrigerated staples;~~

219 ~~(4) Obligations of and obligations guaranteed by:~~

220     (A) The United States;

221     (B) The State of Georgia or a public body thereof authorized to levy taxes; or

222     (C) Any state of the United States or any public body thereof if the obligations or

223     guarantees are general obligations;

224 ~~(5)(2) Obligations to the extent secured by:~~

225     (A) Obligations specified in paragraph ~~(6)~~ (3) of this subsection;

226     (B) Obligations which the bank would be authorized to acquire without limit as

227     investment securities pursuant to Code Section 7-1-287;

228     (C) Obligations fully guaranteed by the United States;

229     (D) Guaranties or commitments or agreements to take over or purchase made by any

230     public body of the United States or any corporation owned directly or indirectly by the

231     United States; or

232     (E) Loan agreements between a local public agency or a public housing agency and an

233     instrumentality of the United States pursuant to national housing legislation under

234     which funds will be provided for payment of the obligations secured by such loan

235     agreements;

236 ~~(6)(3) Obligations in the form of investment securities acquired pursuant to Code~~  
 237 ~~Section 7-1-287 and related regulations;~~

238 ~~(7) Obligations with respect to acceptances under Code Section 7-1-284;~~

239 ~~(8)~~(4) Obligations with respect to the sale of federal or correspondent funds to financial  
 240 institutions having their deposits insured to the same extent as that required of similar  
 241 institutions chartered in this state; and

242 ~~(9)~~(5) A renewal or restructuring of a loan as a new loan or extension of credit following  
 243 the exercise by the bank of reasonable efforts, consistent with safe and sound banking  
 244 practices, to bring the loan into conformance with the lending limits of this Code section,  
 245 unless:

246 (A) New funds are advanced by the bank to the borrower, except as permitted under  
 247 this Code section;

248 (B) A new borrower replaces the original borrower; or

249 (C) The department determines that a renewal or restructuring was undertaken as a  
 250 means to evade the bank's lending limit.

251 (d) In lieu of following the limitations contained in subsections (a) through (c) of this Code  
 252 section and the related regulations of the department, a bank may petition the department  
 253 for approval to utilize ~~limits~~ all of the limitations applicable to national banks regarding  
 254 obligations of a single person or corporation.

255 (e) The department may, by regulation not inconsistent with this Code section, prescribe  
 256 definitions of and requirements for transactions included in or excluded from the  
 257 indebtedness to which this Code section applies. The department may also by regulation  
 258 prescribe less restrictive limitations than those listed in subsections (a) through (c) of this  
 259 Code section for banks meeting certain financial and management criteria. In addition, the  
 260 department may, by regulation or otherwise, specify that the liabilities of a group of one  
 261 or more persons or corporations or both shall be considered as owed by one person or  
 262 corporation for the purposes of this Code section because the ~~group relies substantially on~~  
 263 ~~a common source for the payment of its obligations or makes common use of funds~~  
 264 ~~received by it, or~~ borrowers within the group are related through common control or the  
 265 group meets other criteria established by the department for the combination of  
 266 indebtedness for legal lending limitation purposes."

267 **SECTION 7.**

268 Said chapter is further amended by revising Code Section 7-1-294, relating to transaction of  
 269 business by banks on holidays and outside of banking hours, as follows:

270 "7-1-294.

271 (a) Notwithstanding any existing provisions of law relative to the time of maturity or  
 272 presentment of negotiable instruments, any financial institution doing business in this state  
 273 may, at its option, outside of regular banking hours on any day, or at any time on a day  
 274 which is in whole or in part a holiday, pay, certify, or accept negotiable or nonnegotiable

275 instruments including a demand instrument dated on the holiday on which it is presented  
 276 for payment, certification, or acceptance and transact any other business which would be  
 277 valid if done on a business day during regular banking hours; ~~provided, however, that~~  
 278 ~~nothing herein contained shall authorize the transaction of business on Sundays.~~

279 (b) Nothing herein contained in this Code section shall require any financial institution  
 280 which remains open for business on all or a part of any holiday to do or perform any act  
 281 on that day in its capacity as a collection agent which would not be required of it if it were  
 282 closed on such holiday or part holiday."

### 283 SECTION 8.

284 Said chapter is further amended by adding new Code sections to read as follows:

285 "7-1-316.

286 (a)(1) A trust company shall provide an irrevocable letter of credit or pledge securities  
 287 acceptable to the department to defray the costs of a liquidation of the trust company in  
 288 the event it should be placed into receivership.

289 (2) The amount of the securities or the letter of credit required in this Code section shall  
 290 be determined by the department as appropriate to defray the costs associated with  
 291 receivership, provided that such amount shall be no less than \$500,000.00.

292 (3) Any letter of credit shall be:

293 (A) Made payable to the department and issued by a Federal Home Loan Bank or a  
 294 federally insured financial institution, approved by the department and authorized to do  
 295 business in this state;

296 (B) In a form and with terms acceptable by the department; and

297 (C) Obtained from an entity in which the trust company has no financial interest.

298 (4) Any pledged securities shall be held at a bank authorized to do business in this state,  
 299 and any fees associated with holding such securities shall be the responsibility of the trust  
 300 company.

301 (b) If a trust company is placed in receivership, the department may, without regard to any  
 302 priorities, preferences, or adverse claims, reduce the pledged securities or the letter of  
 303 credit provided by a trust company to cash and, as soon as practicable, utilize the cash to  
 304 defray the costs associated with receivership.

305 7-1-317.

306 (a) The department may require, based on safety and soundness, that a trust company  
 307 maintain a minimum amount of capital, provided that such amount shall in no event be less  
 308 than \$3 million. The department may alter the amount of capital required to be maintained

309 by a trust company from time to time as may be necessary for the safe and sound operation  
 310 of such trust company.

311 (b) The department may consider the following in establishing the minimum amount of  
 312 capital:

313 (1) The nature and type of business to be conducted;

314 (2) The nature and liquidity of assets to be held;

315 (3) The amount of fiduciary assets to be under management of the trust company;

316 (4) The type of fiduciary assets to be held and the depository for such assets;

317 (5) The complexity of fiduciary duties and degree of discretion to be undertaken;

318 (6) The competence and experience of management;

319 (7) The extent and adequacy of internal controls;

320 (8) The presence or absence of annual unqualified audits by an independent certified  
 321 public accountant;

322 (9) The reasonableness of business plans for retaining or acquiring additional equity  
 323 capital;

324 (10) The existence and adequacy of insurance to protect the clients, beneficiaries, and  
 325 grantors of the trust company;

326 (11) Any history of operating losses;

327 (12) Any history of loss in relation to fiduciary or custodial accounts; and

328 (13) The amount of support from the trust company's parent or affiliate.

329 7-1-318.

330 (a) No trust company shall pledge or create a lien on any of its assets except to secure:

331 (1) The repayment of money borrowed; or

332 (2) Trust accounts administered by the trust company.

333 (b) An act, deed, conveyance, pledge, or contract in violation of this Code section shall be  
 334 considered void."

### 335 **SECTION 9.**

336 Said chapter is further amended by revising Code Section 7-1-351, relating to deposits by  
 337 minors and safe-deposit agreements with banks and trust companies, as follows:

338 "7-1-351.

339 (a) A bank may receive deposits from:

340 (1) A minor who is at least 16 years of age; or

341 (2) ~~A minor~~ One or more minors jointly with one or more adults ~~or other minors~~, as party  
 342 to and with the same effect as a multiple-party account under Article 8 of this chapter.

343 (b) A bank may use electronic means, including, but not limited to, wire and mobile  
 344 application software, to provide access to and facilitate the movement of money in such  
 345 deposit account.

346 (c) A bank or trust company may rent a safe-deposit box or other receptacle for safe  
 347 deposit of property to, and receive property for safe deposit from, a:

348 (1) ~~A minor, individually who is at least 16 years of age;~~ or

349 (2) One or more minors jointly with one or more adults ~~or other minors.~~

350 ~~(c)~~(d) A bank or trust company may deal with a minor who is at least 16 years of age with  
 351 respect to a deposit account or safe-deposit agreement covered by paragraph (1) of  
 352 subsection (a) or ~~(b)~~ paragraph (1) of subsection (c) of this Code section without the  
 353 consent of a parent or guardian and with the same effect as though the minor were an adult.  
 354 A parent or guardian shall not have any right in that capacity to interfere with any such  
 355 transaction. Any action of the minor with respect to such deposit account or safe-deposit  
 356 agreement shall be binding on the minor with the same effect as though the minor were an  
 357 adult.

358 (e) Nothing in this Code section shall be deemed to require a bank or trust company to  
 359 provide deposit accounts or safe-deposit agreements authorized by this Code section."

#### 360 SECTION 10.

361 Said chapter is further amended in Code Section 7-1-394, relating to investigation, approval  
 362 or disapproval by the department, and abbreviated procedures for incorporation of banks and  
 363 trust companies, by revising subsections (d) and (e) as follows:

364 "(d) ~~The department shall not approve articles for any trust company that is not also a bank~~  
 365 ~~or an affiliated trust company as defined in Code Section 7-1-320.~~

366 ~~(e)~~ The department may utilize in its investigation process such reports from other bank  
 367 supervisory agencies as are pertinent to the requirements of Georgia state law."

#### 368 SECTION 11.

369 Said chapter is further amended in Code Section 7-1-419, relating to subordinated securities  
 370 of banks and trust companies, by revising subsection (a) as follows:

371 "(a) A bank or trust company may issue notes, debentures, or other obligations in the form  
 372 of 'subordinated securities,' provided that they:

373 (1) Are subordinated in right of payment, in the event of insolvency or liquidation of the  
 374 bank or trust company, to the prior payment of all deposits of the bank or trust company  
 375 and of all claims of other creditors of the bank or trust company except the holders of  
 376 securities on a parity therewith and the holders of securities expressly subordinated  
 377 thereto;

378 (2) Are authorized by the same votes of directors ~~and shareholders~~ as those required for  
 379 authorization of an increase in capital stock or any instrument convertible into capital  
 380 stock of the bank or trust company ~~under Code Section 7-1-511;~~

381 (3) Contain provisions for amortization, serial maturities, transfers to a sinking fund,  
 382 allocation of reserves, or other provisions sufficient to pay or to have paid at maturity all  
 383 amounts due thereon; ~~and~~

384 ~~Are approved by the department prior to the issue thereof~~ Furnish disclosures to  
 385 investors of the risks associated with the subordinated securities prior to investment; and

386 (5) Include notice that, if the bank or trust company becomes subject to a regulatory  
 387 action, then the bank or trust company may be prohibited from paying or retiring the  
 388 subordinated securities."

### 389 SECTION 12.

390 Said chapter is further amended in Code Section 7-1-485, relating to removal of directors and  
 391 vacancies within the board of directors of banks and trust companies, by revising  
 392 subsection (b) as follows:

393 "(b) The board may remove a director from office if:

394 (1) ~~He~~ The director is adjudicated an incompetent by a court or is convicted of a felony;

395 (2) ~~He~~ The director does not, within 60 days after his or her election or such longer time  
 396 as the bylaws may specify, accept the office in writing or by attendance at a meeting and  
 397 fulfill other requirements for holding the office;

398 (3) ~~He~~ The director fails to attend regular meetings of the board for six successive  
 399 monthly meetings or two successive quarterly meetings, if quarterly meetings have been  
 400 approved by the department, without having been excused by the board; ~~or~~

401 (4) ~~He~~ The director was an employee or duly elected officer of the bank or trust company  
 402 and was discharged or resigned at the request of the board for reasons relating to  
 403 performance of duties as an employee or officer of the bank or trust company;

404 (5) The director has been indicted for any crime involving moral turpitude, dishonesty,  
 405 or breach of trust; or

406 (6) The director has failed to make payments on a loan or other extension of credit which  
 407 causes a loss to a financial institution."

### 408 SECTION 13.

409 Said chapter is further amended in Code Section 7-1-607, relating to registration, reporting,  
 410 examinations, and control of bank holding companies, by revising subsections (a) and (d) as  
 411 follows:

412 "(a) On July 1, 1976, and annually thereafter on dates established by the commissioner,  
 413 each bank holding company that controls a bank chartered by the department shall register  
 414 with the commissioner on forms provided or prescribed by him or her, which may include  
 415 such information with respect to the financial condition, operation, management, and  
 416 intercompany relationships of the bank holding company and its subsidiaries and related  
 417 matters as the commissioner may deem necessary or appropriate to carry out the purposes  
 418 of this part."

419 "(d) Bank holding companies that control a bank chartered by the department and  
 420 subsidiaries or affiliates thereof shall be regulated, controlled, and examined by the  
 421 commissioner to the same extent that he or she regulates, controls, and examines state  
 422 banks under his or her jurisdiction, which would be in addition to the authority of the  
 423 Federal Reserve Board as fixed by the laws of the United States. The commissioner is  
 424 authorized, directed, and required to promulgate, with precision, rules and regulations and  
 425 investment procedures in the regulation, examination, and control of bank holding  
 426 companies that control a bank chartered by the department."

427 **SECTION 14.**

428 Said chapter is further amended in Code Section 7-1-621, relating to definitions relative to  
 429 interstate acquisitions of banks and bank holding companies, by revising paragraph (3) as  
 430 follows:

431 "(3) 'Bank holding company' means any company which is a bank holding company  
 432 under either Code Section 7-1-605 or ~~Section 2(a) of the federal Bank Holding Company~~  
 433 ~~Act of 1956, as amended, 12 U.S.C. Section 1841(a).~~"

434 **SECTION 15.**

435 Said chapter is further amended by revising Code Section 7-1-628.5, relating to requirements  
 436 for out-of-state bank that is a resulting bank of an interstate merger transaction, as follows:  
 437 "7-1-628.5.

438 ~~An out-of-state bank that is to be the resulting bank of an interstate merger transaction shall~~  
 439 ~~comply or assure compliance with the following requirements:~~

440 ~~(1) Part 19 of this article, if applicable to the transaction shall require any holding~~  
 441 ~~company of the resulting bank to comply with Code Sections 7-1-605 through 7-1-612;~~

442 ~~(2)(a)~~ An out-of-state bank that will be the resulting bank pursuant to an interstate merger  
 443 transaction involving a Georgia state bank shall notify the commissioner of the proposed  
 444 merger not later than the date on which it files an application for an interstate merger  
 445 transaction with the responsible federal bank supervisory agency, provide such information

446 as required by rule or regulation or as the commissioner may otherwise specify, and pay  
 447 any filing fee required by regulation;.

448 ~~(3)(b)~~ Prior to consummation of ~~the~~ an interstate merger between an out-of-state bank and  
 449 a Georgia state bank, the resulting bank shall provide the commissioner with satisfactory  
 450 evidence of all required approvals from all relevant bank supervisory agencies; ~~and.~~

451 ~~(4)(c)~~ Prior to consummation of ~~the~~ an interstate merger between an out-of-state bank and  
 452 a Georgia state bank, and continuously thereafter, the out-of-state bank shall ~~certify to the~~  
 453 ~~department that while it has a branch or any other location in Georgia, it will maintain~~  
 454 deposit insurance issued by a federal public body while it has a branch or any other  
 455 location in this state.

456 (d) Any holding company of the resulting bank from an interstate merger transaction  
 457 between an out-of-state bank and a Georgia state bank shall comply with Part 19 of this  
 458 article and Code Sections 7-1-605 through 7-1-612."

459 **SECTION 16.**

460 Said chapter is further amended in Code Section 7-1-630, relating to initial subscribers,  
 461 required filings, fees, and selection of initial directors of credit unions, by revising subsection  
 462 (b) as follows:

463 "(b) For purposes of this article, 'common bond' is described as that specific relationship  
 464 of occupation, association, or interest; residence or employment within a well-defined  
 465 neighborhood, community, or rural district; employees of a common employer; or members  
 466 of a bona fide cooperative, educational, fraternal, professional, religious, rural, or similar  
 467 organization which tends to create a mutual interest between persons sharing the  
 468 relationship. Persons related by blood, adoption, or marriage to or living in the same  
 469 household with a person within such common bond and the surviving spouses of deceased  
 470 members shall also be considered within the common bond."

471 **SECTION 17.**

472 Said chapter is further amended by revising Code Section 7-1-650, relating to powers of  
 473 credit unions, as follows:

474 "7-1-650.

475 A credit union shall have, in addition to the powers common to all corporations under the  
 476 laws of this state, the ~~following powers~~ power to:

477 (1) ~~It may receive~~ Receive funds from its members or other financial institutions in the  
 478 form of shares and deposits on accounts or as evidenced by certificates of deposit issued  
 479 by the credit union but shall not have the power to offer third-party payment services  
 480 except as authorized under Code Section 7-1-670;

- 481 (2) ~~It may receive~~ Receive savings deposits from nonmembers ~~in such manner as the~~  
 482 ~~bylaws may provide, but such deposits may not be subject to check and may not bear,~~  
 483 ~~provided that such deposits are:~~
- 484 (A) Insured by or through a federal public body or are expressly authorized by state or  
 485 federal law;
- 486 (B) Made in such a manner as expressly authorized by the bylaws;
- 487 (C) Not deposited in a share draft account; and
- 488 (D) Not bearing a greater rate of interest than the rate of interest paid to members for  
 489 the same class of deposit;
- 490 (3) ~~It may make~~ Make loans to members subject to approval by its credit committee or  
 491 authorized employees pursuant to Code Section 7-1-658;
- 492 (4) ~~It may also invest, on~~ On the authority of its board of directors or by employees  
 493 authorized by the board of directors, ~~funds in the following manner~~ invest:
- 494 (A) In obligations of the United States, including bonds and securities upon which  
 495 payment of principal and interest is fully guaranteed by the United States; obligations  
 496 issued by banks for cooperatives, federal land banks, federal intermediate credit banks,  
 497 federal home loan banks, the Federal Home Loan Bank Board, or any corporation  
 498 designated in Section 846 of Title 31 of the United States Code as a wholly owned  
 499 government corporation; or in obligations, participations, or other instruments of or  
 500 issued by or fully guaranteed as to principal and interest by the Federal National  
 501 Mortgage Association or the Government National Mortgage Association;
- 502 (B) In general and direct obligations of the State of Georgia, its counties, districts, and  
 503 municipalities which have been validated as provided by law, if no more than 25  
 504 percent of the shares and deposits of a credit union shall be invested in the obligations  
 505 of any one such obligor;
- 506 (C) In loans to other credit unions, provided the loans do not exceed 10 percent of the  
 507 shares, deposits, and surplus of the investing credit union;
- 508 (D) By depositing its funds in banks, savings and loan associations, and credit unions;  
 509 by purchasing certificates of deposit and savings certificates which such financial  
 510 institutions are authorized to issue; and by selling or purchasing federal or  
 511 correspondent (daily) funds, whole loans, or loan participations through such financial  
 512 institutions; subject to limitations prescribed in regulations issued by the department;  
 513 and
- 514 (E) In any other types of investments authorized by the department, including  
 515 commercial paper, provided that such investments shall not, in the aggregate, exceed  
 516 10 percent of the shares, deposits, and surplus of the investing credit union. ~~In lieu of~~  
 517 ~~the foregoing limitation, any credit union may invest up to~~ or 15 percent of its equity

518 capital, as defined by the department, in authorized investments issued by any single  
519 obligor;

520 (5) ~~It may borrow~~ Borrow from any source, but provided that the total of such  
521 borrowings shall at no time exceed 50 percent of paid-in shares, deposits, and surplus.  
522 The department may, notwithstanding the other provisions of this Code section,  
523 temporarily waive the requirements of this paragraph to permit an individual credit union  
524 to borrow for emergency purposes;

525 (6) ~~It may undertake~~ Undertake, with the approval of the department, other activities  
526 which are not inconsistent with this chapter or regulations adopted pursuant thereto;  
527 provided, however, that no such approval shall be granted unless the commissioner  
528 determines the activities do not present undue safety and soundness risks to the credit  
529 union involved;

530 (7) ~~It may organize~~ Organize and engage in business without having any stated amount  
531 of capital subscribed or paid in other than that derived from the subscribers' qualifying  
532 shares, ~~may~~ commence business with only such capital authorized and paid in as may be  
533 provided in its bylaws, and ~~may~~ provide for the payment and withdrawal thereof as and  
534 in the manner provided by its bylaws;

535 (8) ~~It may purchase~~ Purchase, hold, and convey real estate for the following purposes  
536 only:

537 (A) Such real estate as ~~shall be necessary for the convenient~~ the credit union occupies  
538 or intends to occupy primarily for the transaction of its business, subject to the prior  
539 approval of the department except to the extent authorized by regulation;

540 (B) Such real estate as shall be conveyed to it in satisfaction of debt previously  
541 contracted in the course of its business; and

542 (C) Such real estate as it shall purchase at sales under judgments, decrees, or mortgage  
543 foreclosures pursuant to mortgages or security deeds held by it;

544 (9) ~~Real~~ Hold real estate acquired in the cases provided for by subparagraphs (B) and (C)  
545 of paragraph (8) of this Code section and real estate which has ceased to be used  
546 primarily as credit union premises ~~may be held~~, subject to a determination by a majority  
547 vote of its directors at least once each year as to the advisability of retaining any such  
548 property; and provided that no such property ~~may be~~ is held for more than five years  
549 without the prior written approval of the department;

550 (10) ~~Properties~~, Hold property other than real estate, which ~~are~~ is acquired in satisfaction  
551 of debts previously contracted and which a credit union is not otherwise authorized to  
552 own ~~shall be held~~, for no longer than six months unless such time period is extended by  
553 the department;

554 ~~(11) Disposition of such~~ Dispose of property may be financed held pursuant to  
 555 paragraphs (9) and (10) of this subsection through financing by the credit union without  
 556 the advance of additional funds irrespective of the purchasers' membership in the credit  
 557 union and of ordinarily applicable collateral margin requirements; and  
 558 ~~(10)(12) It may provide~~ Provide, through an amendment to its bylaws ~~which shall be~~  
 559 approved by two-thirds of its membership present and voting ~~as otherwise provided in~~  
 560 ~~this part~~, for the elimination or limitation of ~~the~~ personal liability of a director to the  
 561 members in their capacity as shareholders of the credit union to the same extent as a bank  
 562 or trust company operating under the provisions of this chapter."

563 **SECTION 18.**

564 Said chapter is further amended in Code Section 7-1-651, relating to membership and shares  
 565 for credit unions, by revising subsection (b) as follows:

566 "(b) Societies, associations, partnerships, and corporations composed of persons who are  
 567 eligible for membership or headquartered within the field of membership may be admitted  
 568 to membership in the same manner and under the same conditions as such persons."

569 **SECTION 19.**

570 Said chapter is further amended by revising Code Section 7-1-657, relating to duties of  
 571 supervisory committee, inspections, comprehensive annual audits, and use of independent  
 572 accountants by credit unions, as follows:

573 "7-1-657.

574 (a) The supervisory committee shall be responsible for securing a comprehensive audit of  
 575 the credit union at least once each year unless such time period is modified pursuant to the  
 576 rules and regulations of the department. Except as provided for in subsection (c) of this  
 577 Code section, the committee shall employ the services of a licensed, independent certified  
 578 public accountant or firm of such accountants to make such comprehensive audit. The  
 579 results of the audit shall be submitted to the board, and the committee shall present a  
 580 summary of the results of the audit to the membership. The committee shall make  
 581 recommendations to the board for the correction of any deficiencies disclosed by the audit.  
 582 The annual audit shall include a confirmation of the share, deposit, and loan accounts of  
 583 the members and such other procedures as the department might require. The annual audit  
 584 shall be preserved with the records of the credit union, and a copy of such audit shall be  
 585 filed with the department upon request by the department.

586 (b) The supervisory committee, from time to time, may conduct or cause to be conducted  
 587 other audit functions or reviews of operations or may make or cause to be made an  
 588 inspection of the assets and the liabilities of the credit union. The committee shall report

589 the results of any such reviews to the board of directors and shall be responsible for making  
 590 specific recommendations to the board regarding any unsafe, unsound, or unauthorized  
 591 activities discovered.

592 ~~(c) If a credit union has assets of less than \$15 million, the supervisory committee may~~  
 593 ~~employ the services of any independent accountant or firm of such accountants or the~~  
 594 ~~internal auditors of any sponsoring group, concern, or association of credit unions approved~~  
 595 ~~by the department to conduct the audit mandated by subsection (a) of this Code section~~  
 596 Based upon the total assets of a credit union, the complexity of a credit union, or other  
 597 factors, the department may enact rules and regulations authorizing certain credit unions  
 598 to obtain the required comprehensive audit from an individual or entity that is not a  
 599 licensed, independent certified public accountant or firm of such accountants so long as the  
 600 individual or entity is independent or otherwise qualified."

601 **SECTION 20.**

602 Said chapter is further amended in Code Section 7-1-667, relating to mergers of credit  
 603 unions, by revising subsection (a) as follows:

604 "(a) A credit union may, with the approval of the department and in accordance with such  
 605 uniform rules and regulations as it shall make and promulgate, be merged with another  
 606 credit union under the articles of such credit union. Such merger may occur regardless of  
 607 whether the credit unions serve the same field of membership, so long as there is adopted  
 608 a plan agreed upon by the majority of the board of each credit union joining the merger and  
 609 approved by not less than a majority of the members of ~~each~~ the credit union being  
 610 acquired present and eligible to vote at ~~meetings~~ the meeting called for that purpose. The  
 611 department may allow waiver of the member vote if, in its judgment, the merger is  
 612 necessary to protect the safety and soundness of either or both credit unions. All property,  
 613 property rights, and interests of the merging credit union shall, upon merger, be transferred  
 614 to and vested in the continuing credit union without deed, endorsement, or other instrument  
 615 of transfer; and the debts and obligations of the merging credit union shall be deemed to  
 616 have been assumed by the continuing credit union; and thereafter the articles of the  
 617 merging credit union shall be void."

618 **SECTION 21.**

619 Said chapter is further amended in Code Section 7-1-668, relating to conversion of state and  
 620 federal credit unions, by revising subsection (b) as follows:

621 "(b) The procedure for obtaining such approval and effecting the conversions in the case  
 622 of a credit union shall be as follows:

- 623 (1) A meeting of the board of directors, either regular or special, shall be called for the  
 624 purpose of voting on converting from a federal credit union to a credit union or from a  
 625 credit union to a federal credit union. A majority of the board of directors shall adopt a  
 626 resolution approving the contemplated conversion;
- 627 (2) A meeting, either regular or special, of the ~~shareholders~~ members shall then be called  
 628 for voting on the proposed conversion. Notice of said meeting shall be given in the  
 629 manner prescribed in Code Section 7-1-6 and shall include a statement indicating that the  
 630 proposed conversion will be considered at the meeting. Proof of giving of the notice shall  
 631 be by the affidavit of the president of the credit union. A majority of the members  
 632 present at this meeting shall then approve the proposed conversion; and
- 633 (3) Within ten days after such approval of the conversion, the president or vice-president  
 634 and treasurer shall file a verified copy of the resolution adopted by the board of directors  
 635 with the state or federal authority under whose supervision the converting credit union  
 636 is to operate."

637 **SECTION 22.**

638 Said chapter is further amended in Code Section 7-1-687, relating to notice of action against  
 639 licensee by creditor or claimant and other notification requirements, by revising subsection  
 640 (c) as follows:

641 "(c) A bond filed with the department for the purpose of compliance with Code Section  
 642 7-1-683.2 shall not be canceled by either the licensee or the corporate surety except upon  
 643 notice to the department by registered or certified mail ~~or~~, statutory overnight delivery;  
 644 with return receipt requested, or electronically through the Nationwide Multistate Licensing  
 645 System and Registry, and such cancellation shall be effective no sooner than 30 days after  
 646 receipt by the department of such notice and only with respect to any breach of condition  
 647 occurring after the effective date of such cancellation."

648 **SECTION 23.**

649 Said chapter is further amended in Code Section 7-1-707, relating to required endorsement  
 650 by licensee, immediate payments, deferment of payment, identification requirements, and  
 651 acceptable fee for services, by revising subsection (c) as follows:

652 "(c) Notwithstanding the provisions of subsection (b) of this Code section, checks may be  
 653 accepted for collection with payment deferred where the licensee has posted a surety bond  
 654 in the same manner as prescribed for licensed money transmitters or licensed payment  
 655 instrument sellers under Code Section 7-1-683.2 and under the same conditions as set forth  
 656 under Code Section 7-1-687. The surety bond shall be in the aggregate amount of  
 657 \$10,000.00 for each location operated by the licensee, if the licensee operates three or

658 fewer locations, plus \$5,000.00 per location for the fourth and fifth locations operated by  
 659 the licensee, plus \$1,000.00 for each location operated by the licensee in excess of the fifth  
 660 location. The bond shall be in a form satisfactory to the department and shall run to the  
 661 State of Georgia for the benefit of any claimant against the licensee arising out of the  
 662 licensee's business of cashing payment instruments with payment deferred in this state.  
 663 The bond shall not be canceled by either the licensee or the corporate surety except upon  
 664 notice to the department by registered or certified mail ~~or~~ statutory overnight delivery;  
 665 with return receipt requested, or electronically through the Nationwide Multistate Licensing  
 666 System and Registry, and such cancellation shall be effective no sooner than 30 days after  
 667 receipt by the department of such notice. In no event shall payment of a check be deferred  
 668 past the time the licensee has collected on the check. Upon collection, payment shall be  
 669 made immediately to the party from whom the licensee accepted the check."

670

#### SECTION 24.

671 Said chapter is further amended in Code Section 7-1-1003.2, relating to financial and bond  
 672 requirements for licensing and registration of mortgage lenders and mortgage brokers, by  
 673 revising subsections (a) and (b) as follows:

674 "(a) Each licensed or registered mortgage broker shall provide the department with a bond.  
 675 The bond for a mortgage broker shall be in the principal sum of ~~\$50,000.00~~ \$150,000.00  
 676 or such greater sum as the department may require as set forth by regulation based on an  
 677 amount that reflects the dollar amount of loans originated, and the bond shall meet the  
 678 other requirements of subsection (d) of this Code section.

679 (b) Except as otherwise provided in subsection (d) of this Code section, the department  
 680 shall not license or register any mortgage lender unless the applicant or registrant provides  
 681 the department with a bond. The bond for a mortgage lender shall be in the principal sum  
 682 of ~~\$150,000.00~~ \$250,000.00 or such greater sum as the department may require as set forth  
 683 by regulation based on an amount that reflects the dollar amount of loans originated, and  
 684 which bond shall meet the other requirements of subsection (d) of this Code section."

685

#### SECTION 25.

686 Said chapter is further amended in Code Section 7-1-1007, relating to licensee to give notice  
 687 of certain actions brought against it by a creditor or borrower and notice to the department  
 688 of cancellation of bond, by revising subsection (c) as follows:

689 "(c) A bond filed with the department for the purpose of compliance with Code Section  
 690 7-1-1003.2 or 7-1-1004 shall not be canceled by either the mortgage loan originator,  
 691 mortgage broker, or mortgage lender or the corporate surety except upon notice to the  
 692 department by registered or certified mail ~~or~~ statutory overnight delivery with return

693 receipt requested, or electronically through the Nationwide Multistate Licensing System  
 694 and Registry, the cancellation to be effective not less than 30 days after receipt by the  
 695 department of such notice and only with respect to any breach of condition occurring after  
 696 the effective date of such cancellation."

697 **SECTION 26.**

698 Said chapter is further amended in Code Section 7-1-1009, relating to maintenance of books,  
 699 accounts, and records by mortgage lenders, mortgage brokers, and mortgage loan originators;  
 700 investigation and examination of licensees and registrants by department; confidentiality; and  
 701 exemptions from civil liability, by revising subsection (d) as follows:

702 "(d) The department, at its discretion, may:

703 (1) Make such public or private investigations within or outside of this state as it deems  
 704 necessary to determine whether any person has violated or is about to violate this article  
 705 or any rule, regulation, or order under this article, to aid in the enforcement of this article,  
 706 or to assist in the prescribing of rules and regulations pursuant to this article;

707 (2) Require or permit any person to file a statement in writing, under oath or otherwise  
 708 as the department determines, as to all the facts and circumstances concerning the matter  
 709 to be investigated;

710 (3) Disclose information concerning any violation of this article or any rule, regulation,  
 711 or order under this article, provided the information is derived from a final order of the  
 712 department; ~~and~~

713 (4) Disclose the imposition of an administrative fine or penalty under this article; and

714 (5) Conduct an on-site examination without prior notice, with the licensee or registrant  
 715 to pay the reasonably incurred costs for such examination, including out-of-state travel  
 716 expenses, and the department shall be authorized to net such out-of-state expenses against  
 717 the payments from the licensee or registrant."

718 **SECTION 27.**

719 Code Section 13-1-15 of the Official Code of Georgia Annotated, relating to the charging of  
 720 convenience fees by a lender or merchant, is amended by revising subsections (b) and (e) as  
 721 follows:

722 "(b) In addition to any other charges, interest, and fees permitted by law and subject to the  
 723 terms and conditions of the debit card or credit card acceptance agreement, a lender or  
 724 merchant may collect a nonrefundable convenience fee from any person electing to utilize  
 725 an option of payment by electronic means. Such convenience fee shall be in an amount  
 726 that represents the actual cost to a lender or merchant; provided, however, that in lieu of  
 727 the actual cost, a lender or merchant ~~may~~ is authorized to collect a convenience fee which

728 does not exceed the average of the actual cost incurred for a specific type of payment made  
 729 by electronic means for which such lender or merchant imposes a convenience fee."  
 730 "(e) This Code section shall apply only to loans made pursuant to Chapter 1 of Title 7,  
 731 industrial loans made pursuant to Chapter 3 of Title 7, retail installment and home  
 732 solicitation sales contracts entered into pursuant to Article 1 of Chapter 1 of Title 10, motor  
 733 vehicle sales financing contracts entered into pursuant to Article 2 of Chapter 1 of Title 10,  
 734 and insurance premium finance agreements entered into pursuant to Chapter 22 of Title 33;  
 735 provided, however, that a convenience fee authorized under this Code section shall not  
 736 constitute interest, an additional charge, a time price differential, a finance charge, or a  
 737 service charge within the meaning of Code Section 7-3-15, 10-1-4, 10-1-33, or 33-22-9."

738 **SECTION 28.**

739 Chapter 12 of Title 53 of the Official Code of Georgia Annotated, relating to trusts, is  
 740 amended in Code Section 53-12-2, relating to definitions, by revising paragraph (4) as  
 741 follows:

742 "(4) 'Foreign entity' means:

743 (A) Any financial institution whose deposits are federally insured which is organized  
 744 or existing under the laws of any state of the United States, other than Georgia, or any  
 745 subsidiary of such financial institution;

746 (B) Any other corporation organized or existing under the laws of any state of the  
 747 United States ~~which borders upon this state, specifically, Florida, Alabama, Tennessee,~~  
 748 ~~North Carolina, or South Carolina,~~ other than Georgia, and chartered or licensed under  
 749 the laws of such state; and

750 (C) Any federally chartered financial institution whose deposits are federally insured  
 751 having its principal place of business in any state of the United States, other than  
 752 Georgia, or any subsidiary of such financial institution."

753 **SECTION 29.**

754 Said chapter is further amended in Code Section 53-12-321, relating to the authority of  
 755 foreign entities to act in a fiduciary capacity, by revising subsection (a) as follows:

756 "(a) Any foreign entity may act in this state as trustee, executor, administrator, guardian,  
 757 or any other like or similar fiduciary capacity, whether the appointment is by law, will,  
 758 deed, inter vivos trust, security deed, mortgage, deed of trust, court order, or otherwise  
 759 without the necessity of complying with any law of this state relating to the qualification  
 760 of foreign entities to do business in this state or the licensing of foreign entities to do  
 761 business in this state, except as provided in this article, and notwithstanding any  
 762 prohibition, limitation, or restriction contained in any other law of this state, provided only

763 that the foreign entity is authorized to act in the fiduciary capacity in the state in which it  
 764 is ~~incorporated or organized~~ chartered or licensed or, if the foreign entity is a national  
 765 banking association, in the state in which it has its principal place of business."

766 **SECTION 30.**

767 Said chapter is further amended by revising Code Section 53-12-322, relating to the  
 768 prohibition on the establishment of a place of business by a foreign entity acting as a  
 769 fiduciary not transacting business in this state, as follows:

770 "53-12-322.

771 A foreign entity, insofar as it acts in a fiduciary capacity in this state pursuant to this article,  
 772 ~~shall not be required to obtain a certificate of authority to transact business in this state as~~  
 773 ~~required by Article 15 of Chapter 2 of Title 14; provided, however, that such foreign entity~~  
 774 shall not establish or maintain in this state a place of business, branch office, or agency for  
 775 the conduct in this state of business as a fiduciary unless it obtains a certificate of authority  
 776 to transact business in this state as required by Article 15 of Chapter 2 of Title 14."

777 **SECTION 31.**

778 Said chapter is further amended in Code Section 53-12-323, relating to filing statement with  
 779 the Secretary of State and appointment of an agent for service by a foreign entity, by revising  
 780 subsections (a) and (b) as follows:

781 "(a) Prior to the time when any foreign entity acts pursuant to the authority of this article  
 782 in any fiduciary capacity in this state, the foreign entity shall file with the Secretary of State  
 783 a verified statement which shall state:

784 (1) The correct name of the foreign entity;

785 (2) The name of the state under the laws of which it is incorporated or organized or, if  
 786 the foreign entity is a national banking association, a statement of that fact;

787 (3) The address of its principal business office;

788 (4) In what fiduciary capacity it desires to act in this state;

789 (5) That it is authorized to act in a similar fiduciary capacity in the state in which it is  
 790 ~~incorporated or organized~~ chartered or licensed or, if it is a national banking association,  
 791 in which it has its principal place of business; ~~and~~

792 (6) The name of the governmental entity that issued the charter or license; and

793 (7) The name and address of a person who may be found and served with notice,  
 794 summons, or process in this state and who is designated by the foreign entity as its agent  
 795 for such service.

796 (b) The statement provided for in subsection (a) of this Code section shall be verified by  
 797 an officer of the foreign entity, and there shall be filed with it such certificates of public

798 officials and copies of documents certified by public officials as may be necessary to show  
799 that the foreign entity is authorized to act in a fiduciary capacity similar to those in which  
800 it desires to act in this state, in the state in which it is ~~incorporated or organized~~ chartered  
801 or licensed, or, if it is a national banking association, in which it has its principal place of  
802 business."

803 **SECTION 32.**

804 (a) Except as provided for in subsection (b) of this section, this Act shall become effective  
805 on the first day of the month following the month in which it is approved by the Governor  
806 or becomes law without such approval.

807 (b) Section 24 of this Act shall become effective on December 31, 2017.

808 **SECTION 33.**

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