

House Bill 342

By: Representatives Bonner of the 73rd, Houston of the 170th, Dickey of the 145th, Gullett of the 19th, Pirkle of the 169th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance,
2 so as to enact the "Motor Vehicle Title Loan Act"; to require the Department of Banking and
3 Finance to license and regulate title lenders; to establish licensing and regulatory procedures
4 and requirements; to provide for applications and surety bonds; to provide for powers and
5 duties of the department; to provide for fee, record-keeping, bond, and reporting
6 requirements; to require approval for additional locations and certain licensee changes; to
7 require the investigation and examination of applicants and licensees; to establish procedures
8 for unauthorized activities; to provide for subpoenas; to provide for denial and revocation of
9 licenses; to provide for criminal penalties and civil liability; to provide for procedures,
10 conditions, and limitations relative to title loans; to provide for terms, interest, and charges;
11 to provide for loan agreements; to provide for rights and requirements of lenders and
12 borrowers in case of default; to provide for prohibitions; to allow certain legal actions; to
13 provide for a short title; to provide for definitions; to make conforming changes; to amend
14 Chapter 47 of Title 43 of the Official Code of Georgia Annotated, relating to used motor
15 vehicle and used motor vehicle parts dealers, so as to change references from pawnbrokers
16 to title lenders; to amend Part 5 of Article 3 of Chapter 12 of Title 44 of the Official Code
17 of Georgia Annotated, relating to pawnbrokers, so as to remove provisions relative to the
18 pawning of motor vehicles; to amend Article 8 of Chapter 14 of Title 44 of the Official Code

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19 of Georgia Annotated, relating to liens, so as to remove provisions relating to liens of
20 pawnbrokers regarding motor vehicles or their titles; to make conforming changes; to provide
21 for related matters; to provide for an effective date and applicability; to repeal conflicting
22 laws; and for other purposes.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

24 **SECTION 1.**

25 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is
26 amended by adding a new chapter to read as follows:

27 "CHAPTER 3A

28 ARTICLE 1

29 7-3A-1.

30 This chapter shall be known and may be cited as the 'Motor Vehicle Title Loan Act.'

31 7-3A-2.

32 As used in this chapter, the term:

33 (1) 'Control' means the direct or indirect possession of the power to direct or cause the
34 direction of the management or policies of a person.

35 (2) 'Covered employee' means any employee of a licensee engaged in any function
36 related to making title loans.

37 (3) 'Department' means the Department of Banking and Finance.

38 (4) 'Executive officer' means an individual who performs significant managerial,
39 supervisory, or policy-making functions on behalf of a person, including, but not limited

40 to, the chief executive officer, president, chief financial officer, chief operating officer,
41 secretary, and treasurer.

42 (5) 'Individual' means a natural person.

43 (6) 'License' means a license issued by the department under this chapter.

44 (7) 'Licensee' means a person that has obtained a license under this chapter.

45 (8) 'Loan agreement' means a written document that sets out the terms and conditions of
46 the title loan.

47 (9) 'Misrepresentation' means a false statement of a substantive fact or to engage in any
48 conduct which leads to a false belief which is material to the transaction.

49 (10) 'Motor vehicle' means every self-propelled vehicle intended primarily for use and
50 operation on the public highways; provided, however, that such term shall not include a
51 mobile home as such term is defined in Code Section 8-2-160.

52 (11) 'Nationwide Multistate Licensing System and Registry' or 'NMLS' means a licensing
53 system developed and maintained by the Conference of State Bank Supervisors and the
54 American Association of Residential Mortgage Regulators for the licensing and
55 registration of certain persons engaged in nondepository activities.

56 (12) 'Owner' means a person that:

57 (A) Owns, directly or indirectly, a 10 percent or more interest in a corporation or any
58 other form of business organization;

59 (B) Owns, directly or indirectly, 10 percent or more of the voting shares of any
60 corporation or any other form of business organization; or

61 (C) Possesses, either directly or indirectly, the power to direct or cause the direction
62 of the management or policies of a corporation or any other form of business
63 organization, regardless of whether such person owns or controls such interest through
64 one or more individuals or one or more proxies, powers of attorney, nominees,
65 corporations, associations, limited liability companies, partnerships, trusts, joint stock
66 companies, other entities or devices, or any combination thereof.

67 (13) 'Person' means any individual, sole proprietorship, corporation, limited liability
68 company, partnership, trust, or any other group of individuals, however organized.

69 (14) 'Title loan' means a loan secured by the title to a motor vehicle and includes any
70 extension or continuation of such a loan, but shall not include extensions of credit for the
71 purpose of financing the purchase of a motor vehicle or of refinancing a purchase money
72 loan that is secured by a lien on a motor vehicle.

73 (15) 'Title lender' means any person that engages in the business of making title loans.

74 (16) 'Unique identifier' means a number or other identifier assigned by protocols
75 established by NMLS.

76 7-3A-3.

77 (a) No person shall engage in the business of making title loans in Georgia unless such
78 person is licensed by the department in accordance with this chapter or exempt from
79 licensure as provided in this Code section.

80 (b) The chapter shall not apply to:

81 (1) Any state or federally chartered bank, credit union, savings and loan association, or
82 savings bank with deposits that are federally insured; or

83 (2) An individual employed by a licensee or any person exempt from the licensing
84 requirements of this chapter when acting within the scope of employment and under the
85 supervision of the licensee or exempted person as an employee and not as an independent
86 contractor.

87 7-3A-4.

88 (a) Any title loan made by a person without a license, unless such loan is made by a person
89 exempt from licensure, shall be void, and any right to collect any money in connection with
90 such loan shall be forfeited. The person making a loan voided pursuant to this Code

91 section shall promptly refund any money paid and return to the borrower the motor vehicle
92 title and, if applicable, the motor vehicle or its fair market value.

93 (b) Regardless of whether the person has a physical location in this state, no person shall
94 engage in any device, subterfuge, or pretense to evade the requirements of this chapter
95 through any method, including, but not limited to:

96 (1) Making loans disguised as a personal property, sale, or leaseback transaction;

97 (2) Disguising loan proceeds as a cash rebate for the pretextual installment sale of goods
98 or services; and

99 (3) Making, offering, guaranteeing, assisting with, or arranging for a borrower to obtain
100 a loan with a greater rate of interest than is permitted by this chapter through any method.

101 (c) Any borrower injured by a violation of this Code section may bring a civil action,
102 within three years of discovering the violation, in a court of competent jurisdiction to
103 recover the motor vehicle title, the motor vehicle or its fair market value, all amounts paid,
104 and reasonable attorney's fees.

105 ARTICLE 2

106 7-3A-10.

107 Each applicant for an original or renewal license under this chapter shall:

108 (1) Submit an application in writing, under oath, and in such form as the department may
109 prescribe;

110 (2) Furnish to NMLS the following information:

111 (A) The legal name and principal office address of the applicant;

112 (B) The names and residence and business addresses of each owner and executive
113 officer of the applicant;

114 (C) The address of each location where the applicant will engage in the business of
115 making title loans in this state;

116 (D) Any name, subject to approval by the department, under which the applicant will
117 engage in the business of making title loans in this state; and

118 (E) The name and address of the initial registered agent and registered office for
119 service of process in this state;

120 (3) Submit such other data, financial statements, and pertinent information as the
121 department may require with respect to the applicant or its owners or executive officers;
122 and

123 (4) Pay a nonrefundable application and supervision fee as prescribed by rule or
124 regulation of the department.

125 7-3A-11.

126 (a) An applicant shall provide with its application a corporate surety bond issued by a
127 bonding company or insurance company authorized to do business in this state and
128 approved by the department.

129 (b) The bond shall:

130 (1) Be in a form satisfactory to the department;

131 (2) Be in the aggregate amount of \$25,000.00 for the primary location to be operated by
132 a licensee plus \$5,000.00 for each additional location to be operated by such licensee;

133 (3) Run to the State of Georgia for the benefit of the department or any claimant or
134 creditor against a licensee arising out of the licensee's business of making title loans;

135 (4) Require a licensee to pay any and all money for the benefit of any person damaged
136 by noncompliance of the licensee with this chapter, with rules, regulations, or orders
137 issued by the department pursuant to this chapter, or with any condition of the bond; and

138 (5) Require a licensee to pay any and all money that may become due and owing to any
139 creditor of or claimant against the licensee arising out of the licensee's business of making
140 title loans.

141 (c) Payments due under the bond shall include money owed to the department for fees for
142 investigation or examination or fines or penalties for noncompliance of the licensee with
143 this chapter or rules, regulations, or orders issued pursuant to this chapter.

144 (d) Claimants or creditors against the licensee may bring an action directly on the bond.

145 (e) In no event shall the aggregate liability of the surety exceed the principal sum of the
146 face amount of the bond.

147 (f) In the event that the principal sum of the bond is reduced by one or more recoveries or
148 payments thereon, a licensee shall:

149 (1) Provide a new or additional bond so that the total or aggregate principal sum of such
150 bond or bonds equals the sum required under subsection (b) of this Code section; or

151 (2) Provide an endorsement duly executed by the corporate surety reinstating the bond
152 to the required principal sum thereof.

153 (g) A bond shall not be canceled by either the licensee or the corporate surety except upon
154 notice to the department electronically through NMLS, and such cancellation shall be
155 effective no sooner than 30 days after receipt by the department of such notice and only
156 with respect to any breach of condition occurring after the effective date of such
157 cancellation.

158 7-3A-12.

159 (a) The department shall conduct an investigation of every applicant for licensure as it may
160 deem necessary. The department shall exercise discretion in its consideration of an
161 applicant pursuant to this chapter; provided, however, that the department shall not approve
162 an application unless it has satisfactorily ascertained that:

163 (1) The applicant is financially sound and responsible and able to engage in the business
164 of making title loans in an honest, fair, and efficient manner and with the confidence and
165 trust of the community; and

166 (2) All conditions for licensure set forth in this chapter and in the rules and regulations
167 of the department have been satisfied.

168 (b) No license shall be transferable or assignable.

169 (c) Each license shall expire on December 31 of each year.

170 (d) Application for renewal shall be made annually on or before December 1 of each year.

171 7-3A-13.

172 (a) The department is authorized to:

173 (1) Participate in NMLS to facilitate the sharing of information and standardization of
174 the licensing and application processes for persons subject to this chapter;

175 (2) Enter into operating agreements, information sharing agreements, interstate
176 cooperative agreements, and other contracts necessary for the department's participation
177 in NMLS;

178 (3) Disclose or cause to be disclosed without liability, via NMLS, applicant and licensee
179 information, including, but not limited to, violations of this chapter and enforcement
180 actions, to facilitate regulatory oversight;

181 (4) Request that NMLS adopt an appropriate privacy, data security, and security breach
182 notification policy that is in full compliance with existing state and federal law; and

183 (5) Prescribe by rule and regulation requirements for participation by applicants and
184 licensees in NMLS upon the department's determination that each requirement is
185 consistent with both the public interest and the purposes of this chapter.

186 (b) The department shall issue rules and regulations establishing a process whereby
187 licensees may challenge information entered by the department into NMLS.

188 (c) Regardless of its participation in NMLS, the department shall retain full and exclusive
189 authority over determinations of whether to grant, renew, or revoke licenses under this
190 chapter. Nothing in this Code section shall be construed to reduce or otherwise limit such
191 authority.

192 (d) Applicants and licensees shall pay the charges associated with their utilization of
193 NMLS.

194 (e) All information disclosed through NMLS is deemed to be disclosed directly to the
195 department and subject to Code Section 7-1-70. Such information shall not be disclosed
196 to the public and shall remain privileged and confidential pursuant to Code Section 7-1-70.

197 ARTICLE 3

198 7-3A-20.

199 (a) Each licensee shall:

200 (1) Conspicuously post a copy of its license in each location where the licensee engages
201 in the business of making title loans;

202 (2) Submit to NMLS timely reports of condition, which shall be in such form and shall
203 contain such information as the department may require;

204 (3) Clearly label all advertisements and any other documents required by rule or
205 regulation of the department with its unique identifier;

206 (4) Make, keep, and use in its business such books, accounts, and records as the
207 department may require to enforce the provisions of this chapter and the rules and
208 regulations promulgated under it; and

209 (5) Make available to the department, upon request, any books, accounts, records, files,
210 documents, evidence, or other information relating to the business of making title loans.

211 (b) Each licensee shall preserve any books, accounts, and records required to be made,
212 kept, or used pursuant to this Code section or rule or regulation of the department for five
213 years or such greater period of time as prescribed in rules and regulations of the
214 department.

215 (c) A licensee may maintain any books, accounts, and records required to be made, kept,
216 or used pursuant to this Code section:

- 217 (1) In photographic, electronic, or other similar form; and
218 (2) At a location outside of this state so long as such records are transmitted to a location
219 designated by the department within ten days of a written request by the department.

220 7-3A-21.

221 (a) A licensee shall send written notice to the department within ten days of the following:

222 (1) Any knowledge or discovery of an act prohibited by Code Section 7-3A-45;

223 (2) Any knowledge or discovery of the discharge of a covered employee for actual or
224 suspected misrepresentation or dishonest or fraudulent acts;

225 (3) Any knowledge or discovery of an administrative, civil, or criminal action initiated
226 by any governmental entity against the licensee or any owner, executive officer, or
227 covered employee;

228 (4) The filing of a petition by or against the licensee under the United States Bankruptcy
229 Code, 11 U.S.C. Sections 101 through 110, for bankruptcy reorganization or the filing of
230 a petition by or against the licensee for receivership or the making of a general
231 assignment for the benefit of its creditors;

232 (5) Any knowledge or discovery that any of the licensee's owners, executive officers,
233 directors, trustees, agents, or covered employees has been convicted of a felony as
234 described in subsection (a) of Code Section 7-3A-32; and

235 (6) Any knowledge or discovery of a criminal action initiated by any governmental entity
236 for misrepresentations, dishonest acts, or fraudulent acts against any owner, executive
237 officer, director, trustee, agent, or covered employee of a licensee.

238 (b) A licensee shall send written notice to the department within 30 days of the following:

239 (1) The commencement of any action brought against it relating to the business of
240 making title loans;

241 (2) The commencement of any action involving a claim against the bond filed with the
242 department pursuant to Code Section 7-3A-11;

243 (3) The entry of any judgment against the licensee; and

244 (4) Any change in the address of its principal place of business in this state.

245 (c) The corporate surety that issued a licensee a bond pursuant to Code Section 7-3A-11
246 shall send written notice to the department via registered or certified mail or statutory
247 overnight delivery within ten days of paying any claim or judgment to any creditor or
248 claimant with details sufficient to identify the claimant and the claim or judgment so paid.

249 (d) Any notice sent pursuant to this Code section shall be sent by registered or certified
250 mail or statutory overnight delivery and shall include sufficient details to enable the
251 department to identify any relevant creditor or claimant, claim, cause of action, judgment,
252 payment, or prohibited act.

253 7-3A-22.

254 (a) A licensee shall not engage in the business of making title loans at a location in this
255 state that was not included in the licensee's original or renewal application unless the
256 licensee has first received written approval from the department. To obtain such approval,
257 the licensee shall:

258 (1) Submit an application to the department in such form as the department may
259 prescribe;

260 (2) Provide such other information as the department may require concerning the
261 location; and

262 (3) Pay a nonrefundable application fee as prescribed by rule or regulation of the
263 department.

264 (b) No person shall become an owner of any licensee through acquisition or other change
265 in control unless the person has first received written approval from the department. To
266 obtain such approval, such person shall:

267 (1) Submit an application to the department in such form as the department may
268 prescribe;

269 (2) Provide such other information as the department may require concerning the
270 financial responsibility, background, experience, and activities of the applicant or its
271 owners and executive officers; and

272 (3) Pay a nonrefundable application fee as prescribed by rule or regulation of the
273 department.

274 (c) Each manager of a licensee's location in this state shall be approved in writing by the
275 department. A licensee may allow an individual to begin working as a new location
276 manager prior to such approval, provided that the licensee submits an application for
277 approval within 15 days of the new location manager beginning work as a location
278 manager. If the department denies approval of such new location manager, the licensee
279 shall immediately remove the individual upon notice of such denial.

280 (d) The department may, by rule or regulation, prescribe additional requirements for
281 approval of an application submitted pursuant to this Code section.

282 (e) The department shall approve an application properly submitted pursuant to
283 subsection (b) of this Code section if it finds that the applicant has the financial
284 responsibility, character, reputation, experience, and general fitness to warrant a belief that
285 the business will be operated efficiently and fairly, in the public interest, and in accordance
286 with the law.

287 ARTICLE 4

288 7-3A-30.

289 (a) The department shall investigate and examine the affairs, businesses, premises, and
290 records of any applicant, licensee, or any other title lender as often as it deems necessary
291 to carry out the purposes of this chapter, regardless of whether such applicant, licensee, or
292 other title lender acts or claims to act under any other licensing or registration requirement
293 of this state.

294 (b) The department may conduct an investigation or examination pursuant to this Code
295 section at least once every 60 months; provided, however, that department may alter the
296 frequency or scope of investigations or examinations through rules or regulations or waive
297 an investigation or examination if it determines that, based on records submitted to the
298 department and the past history of operations in this state, such investigation or
299 examination is unnecessary.

300 (c) An applicant, licensee, or other title lender shall pay a fee as prescribed by rule or
301 regulation of the department to cover the cost of an investigation or examination.

302 (d) In carrying out an investigation or examination pursuant to this Code section, the
303 department shall be authorized to:

304 (1) Conduct an on-site examination of any applicant, licensee, or other title lender at any
305 location without prior notice to the applicant, licensee, or other title lender;

306 (2) Access, receive, and use any books, accounts, records, files, documents, evidence,
307 or other information, including, but not limited to:

308 (A) Criminal, civil, and administrative history information, including information
309 related to charges that did not result in a conviction;

310 (B) Personal history and experience information, including, but not limited to,
311 independent credit reports obtained from a consumer reporting agency defined in 15
312 U.S.C. Section 1681a; and

313 (C) Any other documents, information, or evidence the department deems relevant to
314 the investigation or examination, regardless of the location, possession, control, or
315 custody of such documents, information, or evidence;

316 (3) Enter into agreements or relationships with other government officials or regulatory
317 authorities to improve efficiencies and reduce regulatory burden by sharing resources,
318 documents, records, information, or evidence or by utilizing standardized or uniform
319 methods or procedures;

320 (4) Accept and rely on investigation or examination reports made by other government
321 officials or regulatory authorities within or outside this state, provided that such reports
322 provide information necessary to fulfill the responsibilities of the department under this
323 chapter;

324 (5) Accept and incorporate in any report of the department audit reports or portions of
325 audit reports made by an independent certified public accountant on behalf of an
326 applicant or licensee;

327 (6) Require or permit any person to file a statement in writing as to all the facts and
328 circumstances concerning any matter to be investigated pursuant to this chapter;

329 (7) Request any financial data relevant to the business of making title loans;

330 (8) Administer oaths, call any party to testify under oath, and require the attendance of
331 witnesses;

332 (9) Require the production of books, accounts, records, files, documents, and papers;

333 (10) Take the depositions of witnesses; and

334 (11) Issue subpoenas for any witness or for the production of documentary evidence.

335 (e) Each licensee or person subject to this chapter shall make available to the department,
336 upon request, any books, accounts, records, files, documents, evidence, or other
337 information relating to the activities of engaging in the business of making title loans.

338 (f) No licensee or person subject to investigation or examination under this chapter shall
339 knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, accounts,
340 records, files, documents, evidence, or other information relative to such investigation or
341 examination.

342 7-3A-31.

343 (a) A subpoena issued pursuant to Code Section 7-3A-30 may be served by:

344 (1) Registered or certified mail or statutory overnight delivery, return receipt requested,
345 to the addressee's business or personal mailing address;

346 (2) Examiners appointed by the department; or
347 (3) The sheriff of the county where such witness resides or is found or where the person
348 in custody of any books, accounts, records, files, documents, or papers resides or is
349 found.

350 (b) The department may issue and apply to enforce subpoenas in this state at the request
351 of any governmental agency, department, organization, or entity regulating the making of
352 title loans in another state if the activities constituting the alleged violation for which the
353 information is sought would be a violation of this chapter if the alleged activities had
354 occurred in this state.

355 (c) If any person refuses to obey a subpoena issued under this chapter, a superior court of
356 appropriate jurisdiction, upon application by the department, may issue to the person an
357 order requiring such person to appear before the court to show cause why such person
358 should not be held in contempt for refusal to obey the subpoena. Failure to obey a
359 subpoena may be punished as contempt by the court.

360 7-3A-32.

361 (a) The department shall not issue a license and may revoke a license if it finds that the
362 applicant or licensee or any director, owner, executive officer, or covered employee of the
363 applicant or licensee has been convicted of a felony in any jurisdiction or of a crime which,
364 if committed within this state, would constitute a felony under the laws of this state. For
365 the purposes of this chapter, a person shall be deemed to have been convicted of a crime
366 if such person shall have pleaded guilty or nolo contendere to a charge thereof before a
367 court or federal magistrate or shall have been found guilty thereof by the decision or
368 judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the
369 pronouncement of sentence or the suspension thereof and regardless of whether first
370 offender treatment without adjudication of guilt pursuant to the charge was entered or an
371 adjudication or sentence was otherwise withheld or not entered on that charge, unless and

372 until such plea of guilty or nolo contendere or such decision, judgment, or verdict shall
373 have been set aside, reversed, or otherwise abrogated by lawful judicial process or until
374 probation, sentence, or both probation and sentence of a first offender without adjudication
375 of guilt have been successfully completed and documented or unless the person convicted
376 of the crime shall have received a pardon therefor from the President of the United States
377 or the governor or other pardoning authority in the jurisdiction where the conviction
378 occurred.

379 (b) The department shall be authorized to obtain criminal history record checks with
380 respect to any applicant or licensee, any owner of the applicant or licensee, and any
381 individual who is a director, executive officer, or covered employee of the applicant or
382 licensee. Such criminal history record checks may be requested by the department through
383 the Georgia Crime Information Center and the Federal Bureau of Investigation, and the
384 department shall have the authority to receive the results of such checks. Fees required for
385 a criminal history record check by the Georgia Crime Information Center or the Federal
386 Bureau of Investigation shall be paid by the applicant or licensee.

387 (c) Upon receipt of fingerprints, fees, and other required information, the Georgia Crime
388 Information Center shall promptly transmit fingerprints to the Federal Bureau of
389 Investigation for a search of bureau records and an appropriate report and shall conduct a
390 search of its own records and records to which it has access. The Georgia Crime
391 Information Center shall notify the department in writing of any finding or if there are no
392 such findings.

393 (d) All criminal history record checks received by the department shall be used by the
394 department for the exclusive purpose of carrying out the responsibilities of this article, shall
395 not be a public record, shall be confidential and privileged, and shall not be disclosed to
396 any other person or agency except to any person or agency which otherwise has a legal
397 right to inspect such records. All such records received by the department shall be

398 maintained in conformity with the requirements of the Georgia Crime Information Center
399 and the Federal Bureau of Investigation, as applicable.

400 (e) Every applicant and licensee shall be authorized and required to obtain and maintain
401 the results of criminal history record checks on covered employees. Such criminal
402 background checks shall be commercial background checks. Applicants and licensees shall
403 be responsible for any applicable fees charged by the company performing the criminal
404 background checks. An applicant or licensee may only employ an individual whose
405 criminal history has been checked and has been found to be in compliance with all lawful
406 requirements prior to the initial date of hire. This provision shall not apply to directors,
407 owners, or executive officers of applicants or licensees, whose backgrounds shall have
408 been investigated through the department before taking office, beginning employment, or
409 securing ownership. The department shall be entitled to review the files of any applicant
410 or licensee to determine whether the required commercial background checks have been
411 conducted and whether all covered employees are qualified. Notwithstanding the
412 requirement that applicants and licensees conduct such commercial background checks, the
413 department shall retain the right to obtain criminal history record checks on covered
414 employees of applicants and licensees pursuant to subsection (b) of this Code section.

415 (f) Upon request by the department, an applicant or licensee shall take all steps necessary
416 to have an international criminal history record check performed on any directors, owners,
417 executive officers, and covered employees of applicants and licensees. The results of such
418 international criminal history record check shall be provided to the department.

419 7-3A-33.

420 (a) The department may revoke a license if it finds that any grounds exist which would
421 require or warrant the denial of an application for the issuance or renewal of a license. The
422 department may deny an application or revoke a license upon a finding that an applicant
423 or a licensee has:

- 424 (1) Committed any fraud, engaged in any dishonest activities, or made any
425 misrepresentation;
- 426 (2) Violated any provision of this chapter, any rule, regulation, or order issued by the
427 department pursuant to this chapter, or any other law in the course of its business of
428 making title loans;
- 429 (3) Made a false statement or failed to give a true reply in an application;
- 430 (4) Demonstrated incompetency or untrustworthiness to act as a title lender;
- 431 (5) Failed to pay within 30 days after it became final a judgment recovered in any court
432 in an action arising out of the licensee's business of making title loans;
- 433 (6) Purposely withheld, deleted, destroyed, or altered information requested by the
434 department or made misrepresentations to the department; or
- 435 (7) Operated in an unsafe or unsound manner.
- 436 (b) The department shall not issue a license and shall revoke a license if it determines that
437 the applicant or licensee is not financially sound or responsible or not able to engage in the
438 business of making title loans in an honest, fair, and efficient manner and with the
439 confidence and trust of the community.
- 440 (c) The department shall not issue a license and may revoke a license if an applicant or
441 licensee was subject to, or employs any person subject to, a final cease and desist order or
442 license revocation under this chapter within the preceding five years. Each applicant or
443 licensee shall, before hiring an employee, examine the department's public records to
444 determine that such employee is not subject to such a cease and desist order or license
445 revocation.
- 446 (d) The department shall not issue a license and may revoke a license if it finds that any
447 owner or executive officer of the applicant or licensee has been an owner or executive
448 officer of a licensee whose application has been denied or license has been revoked within
449 the preceding five years.

450 7-3A-34.

451 (a) Notice of the department's intention to enter an order denying an application or
452 revoking a license shall be sent to the applicant or licensee in writing by registered or
453 certified mail or statutory overnight delivery addressed to the principal office of such
454 applicant or licensee. If a person refuses to accept service of such notice, the notice shall
455 be served by the department under any other method of lawful service, and the person shall
456 be liable to the department for a sum equal to the actual costs incurred to serve the notice.
457 Such liability shall be paid upon notice and demand by the department and shall be
458 assessed and collected in the same manner as other fees or fines administered by the
459 department.

460 (b) Within 20 days of the date of the notice issued pursuant to subsection (a) of this Code
461 section, the applicant or licensee may request in writing a hearing to contest the order. If
462 no such hearing is requested, the department shall enter a final order stating the grounds
463 for the denial or revocation. Such final order shall be effective on the date of issuance, and
464 the department shall send a copy thereof promptly by mail addressed to the principal office
465 of such applicant or licensee.

466 (c) A decision by the department denying an application for licensure or an order of the
467 department revoking a license shall be subject to review in accordance with Chapter 13 of
468 Title 50, the 'Georgia Administrative Procedure Act,' except that judicial review shall be
469 available solely in the superior court of the county of domicile of the department.

470 (d) The department may pursue any administrative action initiated under this chapter
471 against an applicant or a licensee to its conclusion, regardless of whether an applicant or
472 a licensee withdraws its application or whether a licensee does not renew or surrenders its
473 license.

474 (e) The revocation or expiration of a license shall not alter, ameliorate, or void the duties,
475 defenses, and liabilities of either a borrower or licensee under any existing agreement or
476 contract entered into by the licensee prior to such revocation or expiration.

477 7-3A-35.

478 (a) The department may issue an order requiring a person to cease and desist immediately
479 from unauthorized activities whenever it shall appear to the department that:

480 (1) Except as provided in paragraphs (2) and (3) of this subsection, a person has violated
481 any law of this state or any rule, regulation, or order of the department. This includes,
482 but is not limited to, a person engaging in any activity that would subject a licensee to
483 suspension or revocation of its license, whether or not such person is licensed. Such
484 cease and desist order shall be final 20 days from the date of issuance unless the person
485 to whom it is issued requests a hearing in writing within such 20 day period;

486 (2) A person without a license is engaging in or has engaged in activities requiring
487 licensure under this chapter. Such cease and desist order shall be final 30 days from the
488 date of issuance without the opportunity for an administrative hearing. If such person
489 obtains a license or submits to the department evidence of exemption from licensure
490 within the 30 day period, the department shall rescind the order; or

491 (3) A licensee has received a notice of bond cancellation under Code Section 7-3A-11.
492 Such cease and desist order shall be final 20 days from the date of issuance without the
493 opportunity for an administrative hearing. If the required bond is reinstated or replaced
494 and documentation evidencing such is submitted to the department within the 20 day
495 period, the department shall rescind the order. In the event such cease and desist order
496 becomes final, the license shall terminate.

497 (b) Any cease and desist order authorized by this Code section shall be in writing, sent by
498 registered or certified mail or statutory overnight delivery, and addressed to the person's
499 business address or, if the person is an individual, to either the business address or the
500 individual's personal address. Any cease and desist order sent to the person's address that
501 is returned to the department as 'refused' or 'unclaimed' shall be deemed as received and
502 lawfully served.

503 (c) Any hearing authorized under paragraph (1) of subsection (a) of this Code section shall
504 be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
505 Procedure Act.'

506 (d) Judicial review of a final decision of the department issued pursuant to paragraph (1)
507 of subsection (a) of this Code section shall be in accordance with Chapter 13 of Title 50,
508 the 'Georgia Administrative Procedure Act,' except that judicial review shall be available
509 solely in the superior court of the county of domicile of the department.

510 (e) Judicial review of a final decision of the department issued pursuant to paragraph (2)
511 or (3) of subsection (a) of this Code section shall be in accordance with Code Section
512 7-1-90, except that judicial review shall be available solely in the superior court of the
513 county of domicile of the department.

514 7-3A-36.

515 (a) Whenever a person fails to comply with the terms of a final order or decision of the
516 department issued pursuant to this chapter, the department may, through the Attorney
517 General, petition any superior court of this state having jurisdiction over one or more
518 defendants for an order directing such person to obey the order of the department within
519 a period of time as shall be fixed by the court. Upon the filing of such petition, the court
520 shall allow a motion to show cause why it should not be granted. After a hearing upon the
521 merits or after failure of such person to appear when ordered, the court shall grant the
522 petition of the department upon a finding that the order of the department was properly
523 issued.

524 (b) Any person who violates the terms of any final order or decision issued pursuant to this
525 chapter shall be liable for a civil penalty not to exceed \$1,000.00. Each day the violation
526 continues shall constitute a separate offense. In determining the amount of the penalty, the
527 department shall take into account the appropriateness of the penalty relative to the size of
528 the financial resources of such person, the good faith efforts of such person to comply with

529 the order, the gravity of the violation, the history of previous violations by such person, and
530 such other factors or circumstances that contributed to the violation. The department may
531 reduce any penalty which is subject to imposition or has been imposed pursuant to this
532 Code section. Such penalty shall be final except as to judicial review as provided in Code
533 Section 7-1-90, except that judicial review shall be available solely in the superior court
534 of the county of domicile of the department.

535 (c) The department may bring an appropriate civil action to enforce any provision of this
536 chapter or rule, regulation, decision, or order issued pursuant to this chapter, whether by
537 injunction or otherwise, in the superior court of this state having jurisdiction over one or
538 more of the defendants.

539 (d) The department may prescribe by rule or regulation administrative fines for violations
540 of this chapter or rules, regulations, decisions, or orders issued pursuant to this chapter.

541 7-3A-37.

542 (a) Except as provided in this Code section, information obtained by the department
543 pursuant to this chapter, which shall include any information disclosed through NMLS, is
544 confidential as provided in Code Section 7-1-70.

545 (b) In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70, the
546 department is authorized to share information obtained under this chapter with other
547 regulatory or law enforcement authorities. In the case of such sharing, the safeguards to
548 confidentiality already in place within such agencies or authorities shall be deemed
549 adequate. A designated employee or agent of the department may disclose such
550 information as is necessary to conduct a civil or administrative investigation or proceeding
551 related to the business of making title loans.

552 (c) The department is authorized to make the following information available to the public
553 on the department's website, upon receipt by the department of a written request, or in
554 NMLS:

- 555 (1) The name, business address, telephone number, facsimile number, and unique
556 identifier of a licensee;
- 557 (2) The names and titles of the executive officers of a licensee;
- 558 (3) The names of the owners of a licensee;
- 559 (4) The name, business address, telephone number, and facsimile number of all locations
560 of a licensee;
- 561 (5) The terms of or a copy of any bond submitted by a licensee;
- 562 (6) Information concerning any violation of this chapter or any rule, regulation, or order
563 issued pursuant to this chapter, provided that such information is derived from a final
564 order of the department;
- 565 (7) The imposition of an administrative fine or penalty under this chapter; and
- 566 (8) The address of a licensee's registered agent for service of process in this state.

567 7-3A-38.

568 (a) Except in the case of malice, fraud, or bad faith, no person shall be subject to civil
569 liability arising out of furnishing the department with information required pursuant to this
570 chapter. No civil cause of action of any nature shall arise against such person:

571 (1) For any information relating to suspected prohibited conduct furnished to or received
572 from law enforcement officials, their agents, or employees or to or from other regulatory
573 authorities;

574 (2) For any such information furnished to or received from other persons subject to the
575 provisions of this chapter; or

576 (3) For any information furnished in complaints filed with the department.

577 (b) Neither the department nor its employees or agents shall be subject to civil liability,
578 and no civil cause of action of any nature shall exist against the department or its
579 employees or agents arising out of the performance of activities or duties pursuant to this
580 chapter.

581

ARTICLE 5582 7-3A-40.

583 (a) Any title loan shall be for a 30 day period but may be extended or continued in 30 day
584 increments, provided that any such agreement is evidenced in writing as provided for in
585 Code Section 7-3A-41.

586 (b)(1) A title lender may charge and collect interest on a title loan at a rate not to exceed
587 the maximum rate of interest allowed under Code Section 7-4-18.

588 (2) A title lender also may charge the following title loan charges which shall not be
589 considered interest:

590 (A) A fee equal to no more than any fee imposed by the appropriate state to register a
591 lien upon a motor vehicle title, but only if the title lender actually registers such a lien;

592 (B) No more than \$5.00 per day in storage fees, but only if an actual repossession
593 pursuant to a default takes place on a vehicle which was not already in the title lender's
594 possession and only for each day the title lender must actually retain possession of the
595 motor vehicle;

596 (C) A repossession fee of \$50.00 for a repossession within 50 miles of the office where
597 the title loan originated, \$100.00 for a repossession within 51 to 100 miles, \$150.00 for
598 a repossession within 101 to 300 miles, or \$250.00 for a repossession beyond 300
599 miles, but only if an actual repossession pursuant to a default takes place on a vehicle
600 which was not already in the title lender's possession; and

601 (D) A fee of up to \$2.00 for a loan agreement lost or destroyed by the borrower.

602 (3) No other charge or fee of any kind by whatever name denominated, including, but
603 not limited to, any other storage fee or fee for insurance, shall be made by a title lender
604 except as provided for in this subsection.

605 (4) No fee or charge provided for in this Code section may be imposed unless a
606 disclosure regarding that fee or charge has been properly made as provided for in Code
607 Section 7-3A-41.

608 (5) Any attempt to circumvent the interest rates or charges as specified in this Code
609 section shall be null and void.

610 7-3A-41.

611 (a) Each title lender in each title loan transaction shall present the borrower with a loan
612 agreement in at least 12-point type, appropriately completed, with no other written or
613 pictorial matter except as provided in subsection (b) of this Code section, containing the
614 following information:

615 (1) The name and address of the title lender;

616 (2) A disclosure stating:

617 'This is a loan agreement. Failure to make your payment as described in this document
618 can result in the loss of your motor vehicle. The title lender can also charge you certain
619 fees if he or she actually repossesses the motor vehicle.';

620 (3) The length of the title loan transaction is 30 days and that it can only be renewed with
621 the agreement of both parties and only for 30 day incremental periods;

622 (4) The annual percentage rate, computed in accordance with the federal Truth in
623 Lending Act and regulations promulgated thereunder, for the first 30 days of the
624 transaction;

625 (5) The annual percentage rate, computed in accordance with the federal Truth in
626 Lending Act and regulations promulgated thereunder, for each 30 day period for which
627 the title loan transaction might be continued or extended;

628 (6) The dollar amount it would cost the borrower to redeem the motor vehicle;

629 (7) The specific maturity date of the loan agreement;

630 (8) The length of the grace period during which the motor vehicle may be redeemed after
631 the specific maturity date and the dollar amount which would be required to redeem the
632 motor vehicle after the specific maturity date;

633 (9) After the grace period, the motor vehicle will become the property of the title lender;

634 (10) The title lender may not charge a storage fee for the motor vehicle unless the title
635 lender repossesses the motor vehicle pursuant to a default; and

636 (11) The title lender may charge:

637 (A) A storage fee for a repossessed motor vehicle not to exceed \$5.00 per day, but only
638 if the title lender actually repossesses and actually must store the motor vehicle;

639 (B) A repossession fee, but only if the title lender actually repossesses the motor
640 vehicle;

641 (C) A fee to register a lien upon the motor vehicle certificate of title, not to exceed any
642 fee actually charged by the appropriate state to register a lien upon a motor vehicle
643 certificate of title, but only if the title lender actually places such a lien upon the motor
644 vehicle certificate of title; and

645 (D) A fee of up to \$2.00 for each loan agreement lost or destroyed by the borrower.

646 (b) In addition to the information required by subsection (a) of this Code section, the title
647 lender may include the following information in the loan agreement, provided that such
648 information is not used to obscure or obfuscate the information required by subsection (a)
649 of this Code section:

650 (1) Information identifying the borrower;

651 (2) Any logo which the title lender may legally use;

652 (3) Any numbers or characters used by the title lender to identify the motor vehicle
653 involved in the loan agreement;

654 (4) Any other information required to be disclosed to consumers by any other law, rule,
655 or regulation of the United States or of the State of Georgia;

656 (5) Information identifying or describing the motor vehicle;

657 (6) Information which is only for the internal business use of the title lender;

658 (7) The hours of operation of the title lender;

659 (8) The time of day of the transaction; and

660 (9) Any agreement between the borrower and the title lender which does not controvert
661 the provisions of this chapter, Part 5 of Article 8 of Chapter 14 of Title 44, or of Part 2
662 of Article 15 of Chapter 1 of Title 10.

663 (c) The title lender shall have the borrower sign the loan agreement and shall furnish a
664 completed copy to the borrower. The title lender shall maintain a completed and signed
665 copy of the loan agreement on file for five years subsequent to the maturity date of the
666 transaction. Failure to maintain such a copy shall be conclusive proof that the title lender
667 did not furnish such loan agreement to the borrower.

668 7-3A-42.

669 (a) Any motor vehicle certificate of title which has come into the possession of a title
670 lender through a loan agreement made in accordance with this chapter shall be conclusively
671 deemed to be possession of the motor vehicle, and the title lender shall retain physical
672 possession of the motor vehicle certificate of title for the entire length of the title loan but
673 shall not be required in any way to retain physical possession of the motor vehicle at any
674 time.

675 (b) A title lender shall have a lien on the pledged motor vehicle for the money advanced,
676 interest, and title loan charges owed. The title lender may retain possession of the motor
677 vehicle certificate of title until the lien is satisfied and may have a right of action against
678 anyone interfering therewith.

679 (c)(1) There shall be a minimum grace period of 30 calendar days on all title loan
680 transactions. The title lender shall not sell the motor vehicle during the grace period.

681 (2) The grace period shall begin on the first day following the maturity date of the loan
682 agreement or on the first day following the expiration of any extension or continuation

683 of the loan agreement, whichever occurs later. In the event that the last day of the grace
684 period falls on a day the title lender is not open for business, the grace period shall be
685 extended through the first day following upon which the title lender is open for business.

686 (3) A motor vehicle may be redeemed by the borrower within the grace period by the
687 payment of any unpaid accrued interest and title loan charges and the repayment of the
688 principal.

689 (4) A motor vehicle not redeemed within the grace period shall be automatically forfeited
690 to the title lender by operation of this Code section, and any ownership interest of the
691 borrower shall automatically be extinguished.

692 (d) Unless otherwise agreed, a title lender has upon default the right to take physical
693 possession of the motor vehicle. In taking physical possession of the motor vehicle, the
694 title lender or its agent may proceed by legal action or without judicial process, provided
695 that such repossession shall be done without breach of the peace.

696 (e) Within 30 days of the sale of a motor vehicle, the title lender shall remit to the
697 borrower all proceeds from the sale which were in excess of the remaining principal,
698 interest, and title loan charges owed, as provided for in Code Section 7-3A-40. With the
699 remission of funds to the borrower, the title lender shall include a detailed receipt.

700 7-3A-43.

701 (a) The title lender's security interest in a motor vehicle shall be promptly released when
702 the borrower's obligations under the loan agreement are satisfied in full. When releasing
703 the security interest in a motor vehicle, the title lender shall:

704 (1) Mark the original loan agreement with the word 'paid' or 'canceled,' return it to the
705 borrower, and retain a copy in its records;

706 (2) Take any action necessary to reflect the termination of its lien on the motor vehicle's
707 certificate of title; and

708 (3) Return the certificate of title to the borrower.

709 (b) The borrower shall be authorized to prepay the title loan prior to the maturity date by
710 paying the outstanding balance at any time without penalty.

711 (c) The borrower shall also be authorized to make partial payments on a title loan without
712 charge at any time prior to the date such amounts would otherwise be due, and the title
713 lender shall provide the borrower with signed, dated receipts for any cash payment made
714 in person.

715 7-3A-44.

716 (a) In an action of law in any superior court of appropriate jurisdiction, a borrower may
717 recover:

718 (1) Any interest or title loan charges collected which are undisclosed, improperly
719 disclosed, or in excess of that allowed by Code Section 7-3A-40; and

720 (2) Any proceeds from the sale of a motor vehicle which are in excess of the remaining
721 principal, interest, and charges owed and not returned to the borrower as required by
722 subsection (e) of Code Section 7-3A-42.

723 (b)(1) Except as provided in paragraph (2) of this subsection, in any such action in which
724 the borrower prevails, the court shall also award reasonable attorney's fees, court costs,
725 and any expenses of litigation to the borrower.

726 (2) Before filing an action under subsection (a) of this Code section, the borrower shall
727 provide the title lender with a written notice by certified mail or statutory overnight
728 delivery, return receipt requested, that such an action is contemplated, identifying any
729 interest or charges which the borrower contends are undisclosed, improperly disclosed,
730 or in excess of the interest or charges allowed by this chapter. If the court finds that
731 during the 30 days following receipt of such notice the title lender made a good faith
732 effort to return any undisclosed, improperly disclosed or excess interest and charges, the
733 court shall award reasonable attorney's fees, court costs, and expenses of litigation to the
734 title lender.

735 (c) No action shall be brought under subsection (a) of this Code section more than two
736 years after the borrower knew or should have known of the undisclosed, improperly
737 disclosed, or excess interest or charges.

738 7-3A-45.

739 (a) A person shall not offer or make a title loan in or from this state:

740 (1) Based on false or missing material matter in a loan agreement;

741 (2) To an individual under the age of 18 years or who appears to be under the influence
742 of drugs or alcohol;

743 (3) That requires personal liability of the borrower or waives any provisions of this
744 chapter;

745 (4) That includes a charge for any type of insurance in connection with a loan agreement;

746 (5) Under any name other than those authorized by the department in writing;

747 (6) Based upon any misrepresentation or any false statement or document likely to
748 influence, persuade, or induce a potential borrower to take a title loan;

749 (7) Which is a misrepresentation of or conceals any factors, terms, or conditions; or

750 (8) Which is fraudulent or not based in good faith or fair dealing.

751 (b) Any person who makes a title loan in or from this state shall:

752 (1) Securely store motor vehicles and motor vehicle titles in its possession pursuant to
753 a loan agreement;

754 (2) Disburse funds in accordance with a loan agreement;

755 (3) Account for or deliver to any person any personal property obtained in connection
756 with a title loan which has come into the possession of the title lender and which is not
757 the property of the title lender, or which the title lender is not legally entitled to retain;

758 (4) Be prohibited from collecting a debt by extortionate means;

759 (5) Be prohibited from improperly taking physical possession or attempting to
760 improperly take physical possession of a motor vehicle;

761 (6) Be prohibited from knowingly withholding, deleting, destroying, or altering any
762 books, accounts, records, files, documents, evidence, or other information requested by
763 the department; and

764 (7) Be prohibited from making false statements or misrepresentations to the department
765 or NMLS or in connection with any investigation and examination conducted by the
766 department or another governmental agency.

767 7-3A-46.

768 Without limiting the power conferred by Chapter 1 of this title, the department may
769 promulgate reasonable rules and regulations, not inconsistent with law, for the
770 interpretation and enforcement of this chapter.

771 7-3A-47.

772 (a) Any person who willfully engages in the business of making title loans without a
773 license or exemption shall be guilty of a felony punishable as provided in Code Section
774 7-1-845.

775 (b) Any person who violates any provisions of this chapter shall be guilty of a
776 misdemeanor, which shall be punishable by imprisonment for not more than one year or
777 a fine of not more than \$1,000.00, or both.

778 7-3A-48.

779 Nothing in this chapter shall limit:

780 (1) Any statutory or common law right of any person to bring any action in any court for
781 any act involved in the making of title loans;

782 (2) The right of the state to punish any person for any violation of law in relation to title
783 loans; or

784 (3) The authority of the Attorney General to take action pursuant to Part 2 of Article 15
785 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975,' or any other applicable
786 law, in relation to title loans."

787 **SECTION 2.**

788 Said title is further amended by revising subsection (a) of Code Section 7-1-845, relating to
789 miscellaneous felonies and when punished as misdemeanors, as follows:

790 "(a) Any person or corporation, including any financial institution or its directors, officers,
791 agents, or employees, who shall perform the following acts or deeds shall be guilty of a
792 felony:

793 (1) Publishes or causes to be published any false statement, expressed either by printing
794 or writing or by signs, pictures, or the like, of or concerning any financial institution as
795 to the assets or liabilities of such financial institution or as to its solvency or ability to
796 meet its obligations or as to its soundness or who shall publish or cause to be published
797 any other false statement so expressed, calculated to affect the credit or standing of such
798 financial institution or to cast suspicion upon its solvency, soundness, or ability to meet
799 its deposits or other obligations in due course;

800 (2) Falsely circulates any report or makes any false oral statement as to the assets or
801 liabilities of a financial institution or as to its solvency or ability to meet its obligations
802 or as to its soundness or who shall make any other false oral statement calculated to affect
803 the credit or standing of such financial institution or to cast suspicion upon its solvency,
804 soundness, or ability to meet its deposits or other obligations in due course;

805 (3) Willfully engages in the business of:

806 (A) A bank in violation of Code Section 7-1-241;

807 (B) A trust company in violation of Code Section 7-1-242;

808 (C) A credit union in violation of Code Section 7-1-633;

- 809 (D) Selling payment instruments before receiving a license as required by Code
 810 Section 7-1-681;
- 811 (E) An international bank agency before receiving the license required by Code Section
 812 7-1-713;
- 813 (F) A business development corporation before approval of the department is granted
 814 under Code Section 7-1-743;
- 815 (G) Transacting business either directly or indirectly as a mortgage loan originator,
 816 mortgage broker, or mortgage lender unless licensed by the department or exempt from
 817 licensing pursuant to Code Section 7-1-1001; or
- 818 (H) Making installment loans unless licensed by the department or exempt from
 819 licensing requirements pursuant to Code Section 7-3-4; or
- 820 (I) Making title loans unless licensed by the department or exempt from licensing
 821 requirements pursuant to Code Section 7-3A-3; or
- 822 (4) Being an agent of a licensee or such agent's employee who is authorized to sell or
 823 issue payment instruments on behalf of a licensee, issues payment instruments directly
 824 or indirectly to or for his or her own benefit, or sells or issues payment instruments
 825 without accepting funds therefor or sells or issues payment instruments and willfully fails
 826 to remit to the licensee the proceeds from the sale or issuance of such payment
 827 instruments within five business days from the date of such sale or issuance."

828 **SECTION 3.**

829 Said title is further amended by revising subsection (c) of Code Section 7-4-2, relating to
 830 legal rate of interest, maximum rate of interest generally, and certain items not considered
 831 interest, as follows:

832 "(c) Nothing contained in this Code section shall be construed to amend or modify the
 833 provisions of Chapter 3 of this title, the 'Georgia Installment Loan Act,' Chapter 3A of this
 834 title, the 'Motor Vehicle Title Loan Act,' Article 1 of Chapter 1 of Title 10, the 'Retail

835 Installment and Home Solicitation Sales Act,' Chapter 5 of this title, 'The Credit Card and
 836 Credit Card Bank Act,' Chapter 22 of Title 33, the 'Insurance Premium Finance Company
 837 Act,' Part 5 of Article 3 of Chapter 12 of Title 44, relating to pawnbrokers, and, except as
 838 provided in Code Section 7-4-3, Article 2 of Chapter 1 of Title 10, the 'Motor Vehicle Sales
 839 Finance Act.'"

840 **SECTION 4.**

841 Chapter 47 of Title 43 of the Official Code of Georgia Annotated, relating to used motor
 842 vehicle and used motor vehicle parts dealers, is amended by revising paragraphs (4) and (17)
 843 of Code Section 43-47-2, relating to definitions, as follows:

844 "(4) 'Financial institution' means a finance company or a banking institution or any
 845 subsidiary of a finance company or banking institution which engages solely in the
 846 financing or leasing of motor vehicles. Such term shall not mean a ~~pawnbroker as such~~
 847 ~~term is defined in Code Section 44-12-130~~ title lender, as defined in Code Section
 848 7-3A-2."

849 "(17)(A) 'Used motor vehicle dealer,' 'used car dealer,' or 'licensee' means any person
 850 who, for commission or with intent to make a profit or gain of money or other thing of
 851 value, sells, exchanges, rents with option to purchase, offers, or attempts to negotiate
 852 a sale or exchange of an interest in used motor vehicles or who is engaged wholly or
 853 in part in the business of selling used motor vehicles, whether or not such motor
 854 vehicles are owned by such person. A motor vehicle wholesaler and a motor vehicle
 855 broker shall be deemed to be a used motor vehicle dealer or a used car dealer for the
 856 purposes of this chapter. Any independent motor vehicle leasing agency which sells
 857 or offers for sale used motor vehicles shall be deemed to be a used motor vehicle dealer
 858 or a used car dealer for the purposes of this chapter. Any motor vehicle auction
 859 company selling or offering for sale used motor vehicles to independent motor vehicle
 860 dealers or to individual consumers shall be deemed to be a used motor vehicle dealer

861 or used car dealer for the purposes of this chapter except as otherwise provided in
 862 division (x) of subparagraph (B) of this paragraph. Without limiting any of the
 863 foregoing, the sale of five or more used motor vehicles in any one calendar year shall
 864 be prima-facie evidence that a person is engaged in the business of selling used motor
 865 vehicles. A ~~pawnbroker~~ title lender, as defined in Code Section 7-3A-2, who disposes
 866 of all repossessed motor vehicles by selling or exchanging his or her interest in such
 867 motor vehicles only to licensees under this chapter shall not be considered a used motor
 868 vehicle dealer under this chapter ~~as so long as such pawnbroker~~ title lender does not
 869 otherwise engage in activities which would bring ~~him or her~~ such lender under the
 870 licensing requirements of this chapter.

871 (B) Used motor vehicle dealer or used car dealer does not include:

- 872 (i) Franchised motor vehicle dealers and their wholly owned and controlled
 873 subsidiaries operating in the county in which their franchise is located or operating
 874 as a direct dealer of a manufacturer;
- 875 (ii) Receivers, trustees, administrators, executors, guardians, or other persons
 876 appointed by or acting under the judgment or order of any court;
- 877 (iii) Public officers while performing their official duties;
- 878 (iv) Persons disposing of motor vehicles acquired for their own use when the same
 879 shall have been acquired and used in good faith and not for the purpose of avoiding
 880 the provisions of this chapter. Evidence of good faith, as provided in this division,
 881 shall consist of the fact that the vehicle is properly titled and registered in the name
 882 of the transferor;
- 883 (v) Financial institutions when the financial institution sells its repossessed or leased
 884 motor vehicles. Finance companies, for purposes of this chapter, shall not include a
 885 ~~pawnbroker as defined in Code Section 44-12-130~~ title lender, as defined in Code
 886 Section 7-3A-2;

- 887 (vi) Insurance companies ~~who~~ that sell motor vehicles to which they have taken title
888 as an incident of payments made under policies of insurance;
- 889 (vii) Persons, firms, or corporations who act as agents for insurance companies for
890 the purpose of soliciting insurance for motor vehicles;
- 891 (viii) Persons, firms, or corporations engaged in a business other than as a used car
892 dealer, as defined in divisions (i) through (vii) of this subparagraph, who sell motor
893 vehicles traded in as a part of the purchase price of an article other than a motor
894 vehicle and which have not been acquired by direct purchase for cash, and which
895 business is not for the purpose of violating this chapter;
- 896 (ix) Persons, firms, or corporations which sell only vehicles which will not be used
897 primarily for transportation purposes, including, but not limited to, antique
898 automobiles, classic automobiles, and automobiles sold solely as speculative
899 investments. In determining whether a vehicle or vehicles will not be used primarily
900 for transportation purposes, the board may rely on the representations, written or oral,
901 made regarding the vehicles, but may also look at any other relevant evidence; or
- 902 (x) Persons licensed or companies registered under Chapter 6 of this title, relating to
903 auctioneers, when auctioning used motor vehicles which are being disposed of under
904 administration of an estate or when auctioning used motor vehicles and real property
905 at the same sale when such vehicles and property are owned by a common owner."

906

SECTION 5.

907 Said chapter is further amended by revising Code Section 43-47-3, relating to creation of the
908 State Board of Registration of Used Motor Vehicle Dealers and Used Motor Vehicle Parts
909 Dealers, composition, terms of office, vacancies, election of chairperson, and divisions, as
910 follows:

911 "43-47-3.

912 (a) There is created a State Board of Registration of Used Motor Vehicle Dealers and Used
913 Motor Vehicle Parts Dealers. The board shall be ~~comprised~~ composed of ~~14~~ 13 members:

914 (1) Three members shall be independent used car dealers;

915 (2) Three members shall be appointed from the public at large and shall have no
916 connection whatsoever with the sale of used cars or parts;

917 (3) The state revenue commissioner, or a designated agent, shall be a permanent ex
918 officio member and shall be authorized to vote on all matters before the board;

919 ~~(4) Reserved;~~

920 ~~(5)~~(4) One member shall be a representative of the automobile auction industry;

921 ~~(6)~~(5) One member shall be an auto salvage pool operator;

922 ~~(7)~~(6) Two members shall be used motor vehicle parts dealers who are not rebuilders;

923 ~~(8)~~(7) One member shall be a rebuilder;

924 ~~(9) One member shall be a pawnbroker as defined in Code Section 44-12-130 who is in
925 the business of pawning automobile titles and is licensed as a used car dealer; and~~

926 ~~(10)~~(8) One member shall be a representative of the automobile insurance industry.

927 (b) The members of the board referred to in paragraphs (1), (2), (4), (5), (6), (7), and (8);

928 ~~(9), and (10)~~ of subsection (a) of this Code section shall be appointed by the Governor and
929 shall take office on July 1, 1995, or as soon thereafter as appointed. The ~~initial terms of~~

930 ~~those 13 appointed members shall expire as follows: three on June 30, 1996; three on June
931 30, 1997; three on June 30, 1998; and four on June 30, 1999. Thereafter, the appointed~~

932 members of the board shall serve terms of four years. All members shall be residents of
933 this state. No more than two of the appointed members shall be from the same

934 congressional district. The ~~terms of the two ex officio members~~ term of the ex officio
935 member shall be coextensive with ~~their terms~~ such member's term of office.

936 (c) Any vacancies on the board shall be filled by the Governor for the remainder of the
937 unexpired term. The members of the board shall annually elect one of their number to

938 serve as chairperson for a term of two years. The board chairperson shall not also serve
939 contemporaneously as the chairperson of either division under this chapter. The first term
940 as chairperson of the board shall be served by a member or members elected from either
941 division under this chapter; thereafter, the chairperson for each succeeding term shall not
942 be elected from the same division as that of the chairperson from the immediately
943 preceding term. In the event a chairperson of the board is unable to complete his or her
944 term, his or her successor for the remainder of the term shall be elected from the same
945 division as was the chairperson who is unable to complete the term. The chairperson of the
946 board shall be an ex officio member of both divisions under this chapter; however, the
947 chairperson of the board shall not be counted for purposes of determining whether a
948 quorum is present in the division meeting for the division in which he or she is not a
949 regular member.

950 (d)(1) The board shall be composed of two divisions, a used car division and a used parts
951 division.

952 (2) The members of the used car division shall be the three independent used car dealers,
953 two of the members from the public at large, the state revenue commissioner or a
954 designated agent, and the representative of the automobile auction industry, ~~and the~~
955 ~~pawnbroker~~. All powers and duties relating to used car dealers which are not specifically
956 reserved to the board shall be assigned to the used car division. The used car division
957 shall elect one of its members to serve as chairperson of the division for a period of one
958 year.

959 (3) The members of the used parts division shall be the third member from the public at
960 large, the state revenue commissioner or a designated agent, the auto salvage pool
961 operator, the two used motor vehicle parts dealers who are not rebuilders, the rebuilder,
962 and the representative of the automobile insurance industry. All powers and duties
963 relating to used parts dealers which are not specifically reserved to the board shall be

964 assigned to the used parts division. The used parts division shall elect one of its members
965 to serve as chairperson of the division for a period of one year.

966 (4) The chairperson of the board shall determine which of the two members from the
967 public at large will serve in the used car division and which ~~shall~~ will serve in the used
968 parts division."

969 **SECTION 6.**

970 Part 5 of Article 3 of Chapter 12 of Title 44 of the Official Code of Georgia Annotated,
971 relating to pawnbrokers, is amended by revising paragraph (5) of Code Section 44-12-130,
972 relating to definitions, as follows:

973 "(5) 'Pledged goods' means tangible personal property, not including, ~~without limitation,~~
974 ~~all types of motor vehicles or any motor vehicle certificate of title, which property that~~
975 ~~is purchased by, deposited with, or otherwise actually delivered into the possession of a~~
976 ~~pawnbroker in connection with a pawn transaction. However, for purposes of this Code~~
977 ~~section, possession of any motor vehicle certificate of title which has come into the~~
978 ~~possession of a pawnbroker through a pawn transaction made in accordance with law~~
979 ~~shall be conclusively deemed to be possession of the motor vehicle, and the pawnbroker~~
980 ~~shall retain physical possession of the motor vehicle certificate of title for the entire~~
981 ~~length of the pawn transaction but shall not be required in any way to retain physical~~
982 ~~possession of the motor vehicle at any time. 'Pledged goods' shall not include choses in~~
983 ~~action, securities, or printed evidences of indebtedness."~~

984 **SECTION 7.**

985 Said part is further amended by revising subsection (a) of Code Section 44-12-131, relating
986 to duration of pawn transactions, lease-back of motor vehicles prohibited, taking possession
987 of motor vehicles, restrictions on interest, fees, or charges, action to recover excessive or
988 undisclosed charges, and consequences of excessive charges, as follows:

989 "(a)(1) All pawn transactions shall be for 30 day periods but may be extended or
990 continued for additional 30 day periods.

991 ~~(2) A pawnbroker shall not lease back to the seller or pledgor any motor vehicle during
992 a pawn transaction or during any extension or continuation of the pawn transaction.~~

993 ~~(3) Unless otherwise agreed, a pawnbroker has upon default the right to take possession
994 of the motor vehicle. In taking possession, the pawnbroker or his agent may proceed
995 without judicial process if this can be done without breach of the peace or may proceed
996 by action.~~

997 ~~(4)(2)(A)~~ During the first 90 days of any pawn transaction or extension or continuation
998 of the pawn transaction, a pawnbroker may charge for each 30 day period interest and
999 pawnshop charges which together equal no more than 25 percent of the principal
1000 amount advanced, with a minimum charge of up to \$10.00 per 30 day period.

1001 (B) On any pawn transaction which is continued or extended beyond 90 days, a
1002 pawnbroker may charge for each 30 day period interest and pawnshop charges which
1003 together equal no more than 12.5 percent of the principal amount advanced, with a
1004 minimum charge of up to \$5.00 per 30 day period.

1005 ~~(C) In addition to the charges provided for in subparagraphs (A) and (B) of this
1006 paragraph, in a pawn transaction or in any extension or continuation of a pawn
1007 transaction involving a motor vehicle or a motor vehicle certificate of title, a
1008 pawnbroker may charge the following:~~

1009 ~~(i) A fee equal to no more than any fee imposed by the appropriate state to register
1010 a lien upon a motor vehicle title, but only if the pawnbroker actually registers such a
1011 lien;~~

1012 ~~(ii) No more than \$5.00 per day in storage fees, but only if an actual repossession
1013 pursuant to a default takes place on a vehicle which was not already in the
1014 pawnbroker's possession and only for each day the pawnbroker must actually retain
1015 possession of the motor vehicle; and~~

1016 ~~(iii) A repossession fee of \$50.00 within 50 miles of the office where the pawn~~
1017 ~~originated, \$100.00 within 51 to 100 miles, \$150.00 within 101 to 300 miles and a fee~~
1018 ~~of \$250.00 beyond 300 miles, but only if an actual repossession pursuant to a default~~
1019 ~~takes place on a vehicle which was not already in the pawnbroker's possession.~~

1020 ~~(D)~~(C) If a pledgor or seller requests that the pawnbroker mail or ship the pledged item
1021 to the pledgor or seller, a pawnbroker may charge a fee for the actual shipping and
1022 mailing costs, plus a handling fee equal to not more than 50 percent of the actual
1023 shipping and mailing costs.

1024 ~~(E)~~(D) In the event the pledgor or seller has lost or destroyed the original pawn ticket,
1025 a pawnbroker may, at the time of redemption, charge a fee equal to not more than
1026 \$2.00.

1027 ~~(5)~~(3) No other charge or fee of any kind by whatever name denominated, ~~including but~~
1028 ~~not limited to any other storage fee for a motor vehicle,~~ shall be made by a pawnbroker
1029 except as set out in paragraph ~~(4)~~ (2) of this subsection.

1030 ~~(6)~~(4) No fee or charge provided for in this Code section may be imposed unless a
1031 disclosure regarding that fee or charge has been properly made as provided for in Code
1032 Section 44-12-138.

1033 ~~(7)~~(5)(A) Any interest, fees, or charges collected which are undisclosed, improperly
1034 disclosed, or in excess of that allowed by this subsection may be recovered by the
1035 pledgor or seller in an action at law in any superior court of appropriate jurisdiction.

1036 (B) In any such action in which the pledgor or seller prevails, the court shall also award
1037 reasonable attorney's fees, court costs, and any expenses of litigation to the pledgor or
1038 seller.

1039 (C) Before filing an action under this Code section, the pledgor or seller shall provide
1040 the pawnbroker with a written notice by certified mail or statutory overnight delivery,
1041 return receipt requested, that such an action is contemplated, identifying any fees or
1042 charges which the pledgor or seller contends are undisclosed, improperly disclosed, or

1043 in excess of the fees and charges allowed by this Code section. If the court finds that
 1044 during the 30 days following receipt of this notice the pawnbroker made a good faith
 1045 offer effort to return any excess, undisclosed, or improperly disclosed charges, the court
 1046 shall award reasonable attorney's fees, court costs, and expenses of litigation to the
 1047 pawnbroker.

1048 (D) No action shall be brought under this Code section more than two years after the
 1049 pledgor or seller knew or should have known of the excess, undisclosed, or improperly
 1050 disclosed charges."

1051 SECTION 8.

1052 Said part is further amended by revising subsection (b) of Code Section 44-12-138, relating
 1053 to restrictions on advertising and disclosure tickets or statements, as follows:

1054 "(b) Every pawnbroker in every pawn transaction shall present the pledgor or seller with
 1055 a written disclosure ticket or statement in at least nine-point type, appropriately completed,
 1056 with no other written or pictorial matter except as provided in subsection (c) of this Code
 1057 section, containing the following information:

1058 (1) Information identifying the pawnbroker by name and address;

1059 (2) A statement as follows:

1060 "This is a pawn transaction. Failure to make your payments as described in this
 1061 document can result in the loss of the pawned item. The pawnbroker can sell or keep
 1062 the item if you have not made all payments by the specified maturity date.';

1063 ~~(3) If the pawned item is a motor vehicle or motor vehicle certificate of title, a statement~~
 1064 ~~as follows:~~

1065 ~~'Failure to make your payment as described in this document can result in the loss of~~
 1066 ~~your motor vehicle. The pawnbroker can also charge you certain fees if he or she~~
 1067 ~~actually repossesses the motor vehicle.';~~

1068 ~~(4)~~(3) A statement that the length of the pawn transaction is 30 days and that it can only
1069 be renewed with the agreement of both parties and only for 30 day incremental periods;
1070 ~~(5)~~(4) The annual percentage rate, computed in accordance with the federal Truth in
1071 Lending Act and regulations under the federal Truth in Lending Act, for the first 30 days
1072 of the transaction, computed as if all interest and pawnshop charges were considered to
1073 be interest;

1074 ~~(6)~~(5) The annual percentage rate, computed in accordance with the federal Truth in
1075 Lending Act and regulations under the federal Truth in Lending Act, for each 30 day
1076 period in which the pawn transaction might be continued or extended, computed as if all
1077 interest and pawnshop charges were considered to be interest. For purposes of
1078 identifying the annual percentage rate after the second continuation or extension, a single
1079 statement which identifies an annual percentage rate for each possible 30 day period
1080 thereafter shall meet the requirements of this Code section;

1081 ~~(7)~~(6) A statement in dollar amounts of how much it will cost the ~~seller or pledgor or~~
1082 seller to redeem the merchandise in the first 30 day period of the transaction;

1083 ~~(8)~~(7) A statement in dollar amounts of how much it will cost the ~~seller or pledgor or~~
1084 seller to redeem the merchandise in any 30 day period after the first 30 day period of the
1085 pawn transaction, provided that all fees and charges have been kept current;

1086 ~~(9)~~(8) A statement of the specific maturity date of the pawn transaction;

1087 ~~(10)~~(9) A statement of how long, the grace period, the pledged goods may be redeemed
1088 after the specific maturity date and the dollar amount which will be required to redeem
1089 the pledged goods after the specific maturity date;

1090 ~~(11)~~(10) A statement that after the grace period the pledged goods become the property
1091 of the pawnbroker;

1092 ~~(12) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
1093 ~~a statement that the pawnbroker may not charge a storage fee for the motor vehicle unless~~
1094 ~~the pawnbroker repossesses the motor vehicle pursuant to a default;~~

1095 ~~(13) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
 1096 ~~a statement that the pawnbroker may charge a storage fee for a repossessed motor vehicle~~
 1097 ~~not to exceed \$5.00 per day, but only if the pawnbroker actually repossesses and actually~~
 1098 ~~must store the motor vehicle;~~

1099 ~~(14) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
 1100 ~~a statement that the pawnbroker may charge a repossession fee, not to exceed \$50.00, but~~
 1101 ~~only if the pawnbroker actually repossesses the motor vehicle;~~

1102 ~~(15) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
 1103 ~~a statement that the pawnbroker may charge a fee to register a lien upon the motor vehicle~~
 1104 ~~certificate of title, not to exceed any fee actually charged by the appropriate state to~~
 1105 ~~register a lien upon a motor vehicle certificate of title, but only if the pawnbroker actually~~
 1106 ~~places such a lien upon the motor vehicle certificate of title;~~

1107 ~~(16)~~(11) A statement that any costs to ship the pledged items to the pledgor or seller can
 1108 be charged to the pledgor or seller, along with a handling fee to equal no more than 50
 1109 percent of the actual costs to ship the pledged items; and

1110 ~~(17)~~(12) A statement that a fee of up to \$2.00 can be charged for each lost or destroyed
 1111 pawn ticket."

1112 **SECTION 9.**

1113 Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to
 1114 liens, is amended by revising Code Section 44-14-403, relating to lien of pawnbroker, action
 1115 for interference, grace period on pawn transactions, extension or continuation of maturity
 1116 date, and redemption of goods after maturity date, as follows:

1117 "44-14-403.

1118 (a) A pawnbroker shall have a lien on the pledged goods pawned for the money advanced,
 1119 interest, and pawnshop ~~charge~~ charges owed but not for other debts due to ~~him~~ the

1120 pawnbroker. ~~He~~ The pawnbroker may retain possession of the pledged goods until ~~his~~ the
1121 lien is satisfied and may have a right of action against anyone interfering therewith.

1122 (b)(1) There shall be a grace period of ten calendar days on all pawn transactions. ~~On~~
1123 ~~pawn transactions involving motor vehicles or motor vehicle certificates of title, the grace~~
1124 ~~period shall be 30 calendar days; on all other pawn transactions the grace period shall be~~
1125 ~~ten calendar days.~~ In the event that the last day of the grace period falls on a day in
1126 which the pawnbroker is not open for business, the grace period shall be extended
1127 through the first day following upon which the pawnbroker is open for business. The
1128 pawnbroker shall not sell the pledged goods during the grace period.

1129 (2) By agreement of the parties, the maturity date of the pawn transaction may be
1130 extended or continued for 30 day periods, provided that the interest rates and charges as
1131 specified in Code Section 44-12-131 are not exceeded. The grace period shall begin
1132 running on the first day following the maturity date of the pawn transaction or on the first
1133 day following the expiration of any extension or continuation of the pawn transaction,
1134 whichever occurs later. All extensions or continuations of the pawn transaction shall be
1135 evidenced in writing.

1136 (3) Pledged goods may be redeemed by the pledgor or seller within the grace period by
1137 the payment of any unpaid accrued fees and charges, the repayment of the principal, and
1138 the payment of an additional interest charge not to exceed 12.5 percent of the principal.
1139 Pledged goods not redeemed within the grace period shall be automatically forfeited to
1140 the pawnbroker by operation of this Code section, and any ownership interest of the
1141 pledgor or seller shall automatically be extinguished as regards the pledged item.

1142 (4) Any attempt to circumvent the interest rates and charges as specified in Code Section
1143 44-12-131 shall be null and void. A pawn transaction shall be considered to have been
1144 extended or continued unless:

1145 (A) All charges, fees, and the principal have actually been paid or repaid on the
1146 previous pawn transaction;

1147 (B) The pledged goods in the previous transaction, ~~including but not limited to a motor~~
1148 ~~vehicle certificate of title~~, have actually been restored to the possession of the pledgor
1149 or seller; and

1150 (C) The pledged goods in the previous transaction have been removed from the
1151 business premises of the pawnbroker ~~and, in the case of a motor vehicle certificate of~~
1152 ~~title, any lien on the motor vehicle certificate of title has been removed or released."~~

1153 **SECTION 10.**

1154 This Act shall become effective on, and shall apply to any loan agreement entered into on
1155 or after, the one hundred and eightieth day following the date funds are specifically
1156 appropriated for the purposes of this Act in an appropriations Act enacted by the General
1157 Assembly and are available for expenditure.

1158 **SECTION 11.**

1159 All laws and parts of laws in conflict with this Act are repealed.