Georgia State University Law Review

Volume 13
Issue 1 *November 1996*

Article 15

3-29-2012

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Georgia State University Law Review

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Recommended Citation
Georgia State University Law Review (1996) "BANKING AND FINANCE Financial Institutions: "Housekeeping" Changes," *Georgia State University Law Review*: Vol. 13: Iss. 1, Article 15.
Available at: http://digitalarchive.gsu.edu/gsulr/vol13/iss1/15

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BANKING AND FINANCE

Financial Institutions: "Housekeeping" Changes

CODE SECTIONS:	O.C.G.A. §§ 7-1-35, -41, -239, -239.1, -291, -394, -492, -530, -550, -601, -608, -912, -1000 to -1004, -1009 to -1010, -1013 (amended)
BILL NUMBER:	SB 721
ACT NUMBER:	874
GEORGIA LAWS:	1996 Ga. Laws 848
SUMMARY:	The Act amends many provisions in the Code regarding the regulation of lending institutions. The Act specifies qualifications and service level for certain personnel of the Department of Banking and Finance. The Act changes provisions relating to various fees which the Department of Banking and Finance may charge. The Act changes provisions relating to the payment of deposits of, and checks payable to, intestate, deceased persons. The Act changes provisions relating to investigations of banks and trust companies by the Department of Banking and Finance. The Act adds a prohibition on certain lending of funds held in trust by banks or trust companies. The Act changes merger, consolidation, and conversion provisions. The Act expands branch banking provisions. The Act makes a technical change in the law governing certain currency transactions. The Act changes provisions relating to licensing, registration, exemption, and investigation of mortgage lenders and mortgage brokers. The Act changes definitions relating to mortgage lenders and brokers. Finally, the Act changes provisions relating to prohibited acts, reports, and financial statements of mortgage lenders and brokers.
EFFECTIVE DATE:	July 1, 1996

Produced by The Berkeley Electronic Press, 1996.
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History

With the enactment of the Branch Banking Act passed this session,[1] Georgia needed to modify its state banking regulations to comport with these provisions, remove superfluous language, and clarify vague provisions in order to avoid litigation.[2] The Department of Banking and Finance (Department) routinely drafts housekeeping measures of this type in order to update its regulatory authority and meet the needs of Georgia's banking community.[3]

SB 721

Qualifications and Service Level

The Act amends Code section 7-1-35, relating to the appointment of examiners and other personnel by the commissioner, by changing some upper-level positions from classified to unclassified status.[4] This amounts to a mere administrative change within the department and has significance to state employees only.[5]

Fees

The Act amends Code section 7-1-41, relating to fees paid by financial institutions, to expand the description of whom the Department can charge fees.[6] This description was changed, because the prior wording of the Code section limited the Department's authority to charge such fees.[7] The new language expands the responsibility of regulated institutions to pay these fees.[8]

Payment of Deposits and Checks Payable to Intestate Deceased Persons

The Act amends Code sections 7-1-239 and -239.1, relating to payment of deposits of intestate depositors, by increasing the maximum

1. O.C.G.A. § 7-1-601 (Supp. 1996).
2. Telephone Interview with Leslie Ann Bechtel, Deputy Commissioner for Legal Affairs for the State Department of Banking and Finance (May 6, 1996) [hereinafter Bechtel Interview]. The Department prepared the bill and Senator Loyce Turner agreed to sponsor it. Telephone Interview with Senator Loyce Turner, Senate District No. 8 (Apr. 25, 1996) [hereinafter Turner Interview].
3. Turner Interview, *supra* note 2.
4. O.C.G.A. § 7-1-35(a) (Supp. 1996); Bechtel Interview, *supra* note 2.
5. Bechtel Interview, *supra* note 2.
6. O.C.G.A. § 7-1-41 (Supp. 1996).
7. Bechtel Interview, *supra* note 2; *see* 1975 Ga. Laws 445, § 3, at 450-51 (formerly found at O.C.G.A. § 7-1-41 (1989)).
8. O.C.G.A. § 7-1-41 (Supp. 1996).

deposit balance from $2500 to $10,000.[9] The amount was increased, upon the suggestion of the House Banking Committee, to provide for a more realistic amount and to reflect inflation.[10] Code sections 7-1-239(g) and -239.1(e) were added in order to protect banks against persons who defraud banks by pretending to be a relative of a deceased and claiming rights in the deceased's deposits.[11] Under these new Code sections, the person claiming rights to the deposits must sign an affidavit, and if the affidavit is fraudulent, then the bank will not be liable.[12]

Borrowing by Banks

The Act amends Code section 7-1-291, relating to borrowings by financial institutions, to increase the borrowing power of banks.[13] Previously, banks were limited in the amount of money they could borrow from certain sources.[14] The amended Code section eliminates these restrictions, but requires banks to submit a plan of how they will use the borrowed funds and how they intend to repay the funds.[15]

Investigations of Banks and Trust Companies

The Act amends Code section 7-1-394, relating to the investigation of banks and trust companies, by adding a provision granting the Department the authority to use reports from other bank supervisory agencies in their investigations.[16] This provision was added because the Federal Deposit Insurance Commission (FDIC) and state departments already work together on certain examinations regarding lending institutions, and there is no need to duplicate work that has already been done.[17]

Lending of Funds Held in Trust Prohibited

The Act amends Code section 7-1-492 by adding that banks and trust companies may not lend funds held in trust to any officer, director, or

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9. *Id.* §§ 7-1-239, -239.1.
10. Bechtel Interview, *supra* note 2.
11. *Id.*
12. O.C.G.A. §§ 7-1-239(g), -239.1(e) (Supp. 1996).
13. *Id.* § 7-1-291; Bechtel Interview, *supra* note 2.
14. 1973 Ga. Laws 526, § 5, at 529-30 (formerly found at O.C.G.A. § 7-1-291(b) (1989)).
15. O.C.G.A. § 7-1-291 (Supp. 1996).
16. *Id.* § 7-1-394(e).
17. Bechtel Interview, *supra* note 2.

employee.[18] This change was made to comport with fiduciary principles.[19]

Merger, Consolidation, and Conversion Provisions

The Act amends Code sections 7-1-530 and -550, relating to the authority of banks and trust companies to merge or consolidate, to include a housekeeping measure which states that part 20 of chapter 1 of this title applies to a conversion, merger, or consolidation across state lines.[20]

Branch Banking Provisions

Pursuant to the Branch Banking Act[21] passed this session, a new Code section was added to permit acquisition of branch banks consistent with the new law.[22]

Currency Transactions

The Act amends Code section 7-1-912, relating to records and reports of currency transactions, in order to bring Georgia law up to date and in compliance with federal law.[23]

Licensing, Registration, Exemption, and Investigation of Mortgage Lenders and Mortgage Brokers

The Act amends several Code sections relating to mortgage brokers that are not banks.[24] These sections were amended because, as the Department has grown, different needs have arisen in regulating this group of lenders.[25] The amendments in these sections give the Department more enforcement authority and protection through subpoena power and access to information about licensees.[26]

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18. O.C.G.A. § 7-1-492 (Supp. 1996).
19. Bechtel Interview, *supra* note 2.
20. O.C.G.A. §§ 7-1-530(d), -550(b) (Supp. 1996).
21. *Id.* § 7-1-601.
22. *Id.* § 7-1-601(d); Bechtel Interview, *supra* note 2.
23. O.C.G.A. § 7-1-912 (Supp. 1996); Bechtel Interview, *supra* note 2. A financial institution must now keep record and file a report of suspicious currency transactions. O.C.G.A. § 7-1-912(a)(2) (Supp. 1996). This includes transactions when money laundering is suspected. *Id.*
24. O.C.G.A. §§ 7-1-1000 to -1004, -1009 to -1010, -1013 (Supp. 1996).
25. Bechtel Interview, *supra* note 2.
26. *Id.*

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Definitions Relating to Mortgage Lenders and Brokers

The Act amends Code section 7-1-1000 by adding definitions for the following: "Affiliate," "Audited Financial Statement," "Control," and "Executive Officer."[27] These definitions are added because some organizations were trying to evade the law through persons who were not officially officers in the organization by title but were acting in that capacity.[28] The new definitions account for those persons acting in control of the organization, even though their title does not reflect it.[29]

The definition of Audited Financial Statement was added because registered public accountants, who are licensed by the state but are not certified public accountants, sought authority to prepare financial statements.[30] This new definition allows them to do so.[31]

Liability and Indemnification

The Act amends Code section 7-1-1002 to provide that every person who directly or indirectly controls a person illegally transacting mortgage business without a license also violates the Code.[32] Liability can be avoided only if the person in control meets the burden of proof that he or she did not know of the activity and could not have known about it by exercising reasonable care.[33]

The Act also amends Code section 7-1-1004 to provide that indemnification is not available simply due to the corporate structure or legal form of the violating party.[34] This includes limited liability corporations.[35]

Maintenance and Investigation of Records

The Act amends Code section 7-1-1009, relating to the maintenance of books, accounts, and records, as well as the investigation and examination of licensees by the Department, to provide state law backing of investigations of fraudulent practices.[36] The amendment explicitly gives the Department the authority to investigate registrants and bank subsidiaries.[37] Previously, it was unclear whether the Department had the authority to subpoena records; these changes were

27. O.C.G.A. § 7-1-1000 (Supp. 1996).
28. Bechtel Interview, *supra* note 2.
29. O.C.G.A. § 7-1-1000(1), (4)-(5) (Supp. 1996); Bechtel Interview, *supra* note 2.
30. Bechtel Interview, *supra* note 2.
31. O.C.G.A. § 7-1-1000(2) (Supp. 1996).
32. *Id.* § 7-1-1002(c).
33. *Id.*
34. *Id.* § 7-1-1004(i).
35. *Id.*
36. *Id.* § 7-1-1009; Bechtel Interview, *supra* note 2.
37. O.C.G.A. § 7-1-1009(c) (Supp. 1996).

necessary to grant the Department investigative authority similar to other state agencies.[38]

The Act adds a new subsection to Code section 7-1-1009, protecting persons who report illegal activities of mortgage companies from civil liability.[39] This was necessary, because, on occasion, people, including employees of mortgage companies, had called the Department to report suspected illegal activities.[40] Mortgage companies were able to sue those persons for defamation or tortious interference with business.[41] The Act gives both those reporting illegal activities, as well as Department employees, protection from civil liability, thus encouraging the disclosure of information.[42]

Prohibited Acts, Reports, and Financial Statements of Mortgage Lenders and Brokers

The Act amends Code section 7-1-1013, relating to prohibited acts of mortgage lenders and companies, to redefine what a mortgage lender or broker is in Georgia.[43] The old definition included any person lending on property located within the state.[44] Under this definition, mortgage lenders and brokers had been setting up businesses in Georgia, but loaning on property in Alabama, thus evading both states' prohibitions.[45] The new definition includes "transacting a mortgage business *in or from* this state."[46]

Emily S. Sanford

38. Bechtel Interview, *supra* note 2.
39. O.C.G.A. § 7-1-1009(g) (Supp. 1996).
40. Bechtel Interview, *supra* note 2.
41. *Id.*
42. *Id.*
43. O.C.G.A. § 7-1-1013 (Supp. 1996).
44. 1993 Ga. Laws 543, § 1, at 557 (formerly found at O.C.G.A. § 7-1-1013 (Supp. 1995)).
45. Bechtel Interview, *supra* note 2.
46. O.C.G.A. § 7-1-1013 (Supp. 1996) (emphasis added).

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