

## **CHAPTER 3 INDUSTRIAL LOANS**

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### **7-3-1. Short title.**

This chapter shall be known and may be cited as the "Georgia Industrial Loan Act."

(Ga. L. 1955, p. 431, 1; Ga. L. 1997, p. 143, 7.)

### **7-3-2. Purpose of chapter.**

The purpose of this chapter is to authorize and provide regulation of the business of making loans of \$3,000.00 or less and to bring within the regulation of this chapter and within its provisions all loans of \$3,000.00 or less, whether or not made by a person organized or operating under the provisions and authority of some other statute, except those persons and loans expressly exempted by the terms of this chapter. Even though authorized by other statutes of force, such loans and the persons making them, unless expressly exempted, shall be within the operation of this chapter in accordance with its terms.

(Ga. L. 1955, p. 431, 2; Ga. L. 1975, p. 393, 1.)

### **7-3-3. Definitions.**

As used in this chapter, the term:

(1) "Commissioner" means the Industrial Loan Commissioner.

(2) "License" means a single license issued or required under this chapter.

(3) "Licensee" means a person to whom one or more licenses under this chapter have been issued.

(4) "Loan" means any advance of money in an amount of \$3,000.00 or less under a contract requiring repayment and any and all renewals or refinancing thereof or any part thereof.

(5) "Person" means individuals, copartnerships, associations, corporations, and all other legal and commercial entities.

(Ga. L. 1955, p. 431, 4; Ga. L. 1975, p. 393, 1; Ga. L. 1989, p. 14, 7; Ga. L. 1997, p. 143, 7.)

#### **7-3-4. Applicability of chapter - Generally; effect on existing lenders.**

This chapter shall apply to all persons, as defined in Code [Section 7-3-3](#), unless expressly exempted in this chapter, engaged in the business of making loans in amounts of \$3,000.00 or less. On and after May 3, 1955, no person within the operation of this chapter shall charge, contract for, or receive, directly or indirectly, on or in connection with any loan, any interest, charges, fees, compensation, or consideration which is greater than the rates for same provided in this chapter or engage in the business of making such loans of \$3,000.00 or less without a license from the Commissioner as provided in this chapter. Persons engaged in the business of making loans of \$3,000.00 or less who are not exempted from the operation of this chapter may engage in such business and may make such loans lawfully under this chapter provided they comply with this chapter.

(Ga. L. 1955, p. 431, 3; Ga. L. 1975, p. 393, 1; Ga. L. 1989, p. 14, 7.)

#### **7-3-5. Applicability of chapter - Transactions by which money is paid others.**

A loan and brokerage transaction or any other transaction by which money is paid or agreed to be paid others by the borrower in order to obtain the loan shall be subject in all respects to this chapter, if it involves a transaction of \$3,000.00 or less and is not otherwise specifically exempted by the terms of this chapter; and the interest and money paid or agreed to be paid others by the borrower in order to obtain the loan shall not exceed the charges authorized by this chapter, and the application of Code [Section 7-4-8](#) is modified accordingly.

(Ga. L. 1957, p. 331, 3.)

#### **7-3-6. Exemptions from chapter.**

This chapter shall not apply to businesses organized or operating under the authority of any law of this state or of the United States relating to banks, trust companies, real estate loan or mortgage companies, federal savings and loan associations, Georgia building and loan associations, credit unions, and pawnbrokers or to the transactions of such businesses, which businesses are expressly excluded from regulation under this chapter and exempted from the operation of its provisions. This chapter also shall not apply to the University System of Georgia or its educational units, to private colleges and universities in this state and associations thereof, or to student loan transactions of such educational entities, which educational entities and student loan transactions thereof are expressly excluded from regulation under this chapter and exempted from the operation of its provisions. It is expressly provided that no bank, trust company, national bank, insurance company, or real estate loan or mortgage company authorized to do business in this state shall be required to obtain a license under this chapter nor shall the University System of Georgia or its educational units or private colleges and universities in this state and associations thereof be required to obtain a license under this chapter. It is further provided that persons making loans and charging interest thereon at a rate of not more than 8 percent simple interest per annum shall not be subject to this chapter or required to obtain a license under this chapter.

(Ga. L. 1904, p. 79, 18; Ga. L. 1920, p. 215, 19; Code 1933, 25-221, 25-318; Ga. L. 1955, p. 431, 5; Ga. L. 1985, p. 249, 1; Ga. L. 1997, p. 143, 7.)

**7-3-7. Industrial Loan Commissioner; powers and duties generally; employees; deputy; training programs for licensees.**

(a) There is created the office of Industrial Loan Commissioner; and the Commissioner of Insurance of the State of Georgia is designated and constituted the Industrial Loan Commissioner under this chapter and is invested with all of the powers and authority provided for such Commissioner. In addition to those powers specifically enumerated, it shall be his duty and authority to supervise generally and to exercise regulatory powers over the making of loans of \$3,000.00 or less in the State of Georgia by persons governed and regulated by this chapter.

(b) The Commissioner is granted power and authority to make all rules and regulations not inconsistent with this chapter which in his judgment shall be necessary and appropriate to accomplish the purposes and objectives of this chapter, including, without limitation, the power and authority to make such rules and regulations regulating and controlling the manner in which loans of \$3,000.00 or less may be made under this chapter. Such rules and regulations shall be promulgated pursuant to public hearing after notice of such hearing is advertised at least once in one newspaper in Atlanta, Georgia, having general state-wide circulation not less than ten days prior to such hearing. In addition, such rules and regulations shall be promulgated in accordance with [Chapter 13 of Title 50](#), the "Georgia Administrative Procedure Act." Such rules and regulations so promulgated by the Commissioner in his discretion, consistent with the terms of this chapter and other applicable statutes, shall have the full force and effect of law. The Commissioner shall have authority to designate and employ and compensate agents and employees in the manner other agents and employees are employed by his department to assist him in the discharge of his duties under this chapter; and the Commissioner is authorized and empowered to delegate to an assistant or deputy authority to act in his place and stead in his absence or disability.

(c) The Commissioner is authorized to provide for training programs and seminars at such places, at such times, and in such manner as he shall deem advisable. Such programs and seminars shall be for the purpose of acquainting licensees and employees thereof with this chapter, with the rules and regulations promulgated thereunder, and with such other matters relative to the business authorized to be carried on by a licensee under this chapter as the Commissioner shall deem necessary.

(Ga. L. 1955, p. 431, 6; Ga. L. 1959, p. 55, 1; Ga. L. 1963, p. 370, 1; Ga. L. 1964, p. 288, 1; Ga. L. 1975, p. 393, 1; Ga. L. 1986, p. 855, 1.)

**7-3-8. License required; application; fees.**

All persons engaged in the business of making loans of \$3,000.00 or less in the State of Georgia, unless expressly exempted therefrom, shall be required to obtain a license under this chapter. Application for license shall be made to the Commissioner in writing, under oath, on forms prescribed by the Commissioner and shall give the location from which the business is to be conducted and shall give the names of the persons connected with the business together with any other information required by the Commissioner. The application shall be accompanied by a fee of \$250.00 to cover the cost of investigation of the applicant and by a license fee of \$500.00. Said license shall expire on the last day of the calendar year in which granted, subject to renewal pursuant to [Code Section 7-3-10](#). The Commissioner shall collect fees and costs as provided in this chapter and shall issue his receipt for all sums collected by him and periodically, not less

than once in each quarter of each year, at such times as may be convenient, shall pay into the state treasury all sums collected by him.

(Ga. L. 1904, p. 79, 1, 2, 14; Ga. L. 1920, p. 215, 2; Code 1933, 25-201, 25-202, 25-203, 25-301, 25-302; Ga. L. 1955, p. 431, 7; Ga. L. 1964, p. 288, 2; Ga. L. 1975, p. 393, 1; Ga. L. 1989, p. 14, 7; Ga. L. 1992, p. 2725, 1.)

**7-3-9. Investigation of application; issuance or denial of license; purchase of licensed location.**

(a) Upon the filing of the application and the payment of the fees provided in Code [Section 7-3-8](#), the Commissioner shall cause an investigation to be made. Notwithstanding any provision of [Chapter 13 of Title 50](#), entitled the "Georgia Administrative Procedure Act," to the contrary, if the Commissioner has any doubt of the applicant meeting the standards of subsection (b) of this Code section, he shall issue a proposed order to be effective upon a later date without a hearing, unless any person subject to the order requests a hearing within ten days after receipt of the proposed order. Failure to make the request shall constitute a waiver of the right to a hearing pursuant to this Code section. The proposed order issued by the Commissioner shall contain or shall be accompanied by a notice of opportunity for a hearing which shall clearly explain that the hearing must be requested within ten days of receipt of the proposed order and notice. The proposed order and notice shall be served in person by the Commissioner or his agent or by registered or certified mail or statutory overnight delivery, return receipt requested. The Commissioner or such person as he designates shall hear evidence at such hearing and the hearing shall be conducted in accordance with [Chapter 13 of Title 50](#), the "Georgia Administrative Procedure Act." The cost of such hearing and of recording and transcribing the evidence may, in the discretion of the Commissioner, be charged to the person seeking such license.

(b) If the Commissioner shall find that:

(1) The financial responsibility, character, and general fitness of the applicant are such as to command the confidence of the public and to warrant a belief that the business will not be operated unfairly or unlawfully contrary to the purposes of this chapter; and

(2) Allowing the applicant to engage in business will promote the convenience and advantage of the community in which the licensed office is to be located,

the Commissioner shall grant such application and issue to the applicant a license which shall be authority to engage in the business of making loans pursuant to said license in accordance with this chapter.

(c) Any demand for a hearing pursuant to this Code section shall specify in what respects such person is aggrieved and the grounds to be relied upon as a basis for the relief to be demanded at the hearing. Unless postponed by mutual consent, the hearing shall be held within 30 days after receipt by the Commissioner of the demand for a hearing.

(d) In the event any person shall purchase substantially all the assets used in a particular office of any existing licensee, the purchaser shall file an application for license; but, if the licensee selling such assets shall surrender his license for such location to the Commissioner, the purchaser shall not be required, in order to obtain a license, to show that the convenience and

advantage of the community in which the licensed office will be located will be promoted by the establishment or continuance of the proposed business of making loans.

(e) The Commissioner shall grant or deny an application for a license made under this chapter within 60 days from the date of the filing of such application.

(Ga. L. 1920, p. 215, 4; Code 1933, 25-304; Ga. L. 1955, p. 431, 8; Ga. L. 1957, p. 331, 1; Ga. L. 1983, p. 479, 1; Ga. L. 2000, p. 1589, 3.)

**7-3-10. License required for each location; display; duration; annual fee; moving office within county.**

(a) No more than one place of business shall be maintained under the same license, but the Commissioner may issue more than one license to the same licensee.

(b) Each such license issued shall be conspicuously displayed in the place of business for which granted and shall remain in full force and effect until surrendered, revoked, or suspended as provided by this chapter.

(c) Every licensee shall, on or before December 20 of each year, pay to the Commissioner the sum of \$500.00 for each license held by him as an annual license fee for the succeeding calendar year.

(d) If a licensee wishes to move his office within the county, he shall give the Commissioner written notice thereof, which notice shall specify the address or location to which the licensee desires to move and shall also set out, in such form as the Commissioner may require, facts and circumstances which it is contended will show that the removal to the new location will promote the convenience and advantage of that community. Thereafter, the Commissioner shall handle this request in the same manner in which he handles a new application under Code [Section 7-3-9](#), insofar as that Code section is applicable.

(Ga. L. 1904, p. 79, 1; Civil Code 1910, 3450; Ga. L. 1920, p. 215, 7, 8, 9; Code 1933, 25-205, 25-307, 25-308, 25-309; Ga. L. 1955, p. 431, 9; Ga. L. 1963, p. 370, 2; Ga. L. 1964, p. 288, 4; Ga. L. 1989, p. 14, 7; Ga. L. 1992, p. 2725, 2.)

**7-3-11. Failure to begin business or suspending activities after license issued.**

In the event a licensee does not begin the operation of business under such license within a period of 120 days from the date of the issuance of such license or in the event a licensee, after having begun the operation of business under the license, remains inactive in such business for a period of 120 days, such license shall be subject to suspension or revocation by the Commissioner after notice and hearing under the procedure provided in Code [Section 7-3-24](#) for the revocation or suspension of licenses. Any order or decision of the Commissioner on such matter shall be subject to review as provided in Code [Section 7-3-24](#).

(Ga. L. 1964, p. 288, 3; Ga. L. 1989, p. 14, 7.)

### **7-3-12. Books, records, and reports.**

(a) Each licensee shall keep and use in his business sufficient books and records to enable the Commissioner to determine whether or not the licensee is complying with this chapter or any other Act under which such licensee is operating, and such licensee shall preserve such record for at least four years after making the final entry thereon. The renewal or refinancing of a loan shall not constitute a final entry.

(b) The Commissioner may, under rules and regulations promulgated by him under the procedure provided in Code [Section 7-3-7](#), require annual reports from licensees to facilitate the performance of his duties and to regulate effectively the making of loans under this chapter.

(Ga. L. 1904, p. 79, 6; Civil Code 1910, 3454, 3455; Ga. L. 1920, p. 215, 11; Code 1933, 25-209, 25-210, 25-310; Ga. L. 1955, p. 431, 10; Ga. L. 1989, p. 14, 7.)

### **7-3-13. False advertising prohibited.**

No person shall advertise, display, distribute, or broadcast in any manner whatsoever any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for loans subject to this chapter.

(Ga. L. 1920, p. 215, 12; Code 1933, 25-312; Ga. L. 1955, p. 431, 14.)

### **7-3-14. Maximum loan amount, period, and charges.**

Every licensee under this chapter may loan any sum of money not exceeding \$3,000.00 for a period of 36 months and 15 days or less and may charge, contract for, collect, and receive interest and fees and may require the fulfillment of conditions on such loans as provided in this Code section:

(1) INTEREST. A licensee may charge, contract for, receive, and collect interest at a rate not to exceed 10 percent per annum of the face amount of the contract, whether repayable in one single payment or repayable in monthly or other periodic installments. On loan contracts repayable in 18 months or less, the interest may be discounted in advance; and, on contracts repayable over a greater period, the interest shall be added to the principal amount of the loan. On all contracts, interest or discount shall be computed proportionately on equal calendar months;

(2) LOAN FEE. In addition thereto, a licensee may charge, contract for, receive, or collect at the time the loan is made a fee in an amount not greater than 8 percent of the first \$600.00 of the face amount of the contract plus 4 percent of the excess; provided, however, that such fee shall not be charged or collected on that part of a loan which is used to pay or apply on a prior loan or installment of a prior loan from the same licensee to the same borrower made within the immediately preceding six-month period; provided, however, if the loan balance is \$300.00 or less, the said period shall be two months, not six months; provided, further, that nothing contained in this paragraph and paragraph (1) of this Code section shall be construed to permit charges, interest, or fees of any nature whatsoever in the aggregate in excess of the charges, interest, and fees which would constitute a violation of Code [Section 7-4-18](#) and this chapter shall in no way affect Code [Section 7-4-18](#). If a borrower prepays his or her entire loan to a

licensee and within the following 15 days makes a new loan with that licensee and if this is done within the six-month period or the two-month period above described, as may be applicable, the fee may be charged only on the excess by which the face amount of the new contract exceeds the amount which the borrower repaid to that licensee within the said 15 day period;

(3) INSURANCE PREMIUMS. A licensee may charge and collect from the borrower premiums actually paid or to be paid for insurance obtained for the borrower. A licensee may accept as security on any loan or advance made under this chapter any one or any combination of the following:

- (A) Insurance on tangible property against substantial risks or loss;
- (B) Reasonable insurance on the life and health of the principal party; or
- (C) Reasonable insurance against accident of the principal party;

provided, however, that any such insurance shall be reasonably related to the type and value of the property insured and to the amount and term of the loan and shall be obtained from an insurance company authorized to conduct such business in the State of Georgia and at rates lawfully filed by such company with the Commissioner of Insurance and through a regular insurance agent licensed by the Commissioner of Insurance; provided, further, the amount of life, health, or accident insurance required as security for loans made under this chapter shall not exceed the amount of the loan, including charges, to be secured; and the premiums on such insurance required of the principal party obligated shall be limited to premiums reasonably based upon reliable actuarial experience and sound insurance practice; and the Commissioner is authorized and directed to promulgate rules and regulations to effectuate this provision in accordance with the spirit and intent thereof. It shall be the duty of the Commissioner from time to time under the foregoing direction, after public hearing in the manner provided in subsection (b) of Code [Section 7-3-7](#), to determine and promulgate the rates and maximum premiums permissible to be charged for life, health, and accident insurance required as security for a loan made under this chapter and to make regulations incident thereto necessary to effectuate the same; such premiums, when thus established and as changed from time to time in the manner aforesaid, shall be the maximum effective and permissible charges under this paragraph. Premiums paid or to be paid pursuant to the authority of this paragraph shall not constitute interest. The insurance company in turn may pay to the party writing the insurance policy sold in connection with the loan a fee or commission in an amount which is reasonable in relationship to the transaction and in no event in excess of the amount of fee or commission customarily paid within the industry where comparable insurance is sold in a transaction not involving credit, as determined by the Commissioner;

(4) LATE CHARGE. A licensee may charge and collect from the borrower a late or delinquent charge of \$10.00 or an amount equal to 5 for each \$1.00 of any installment which is not paid within five days from the date such payment is due, whichever is greater, provided that this late or delinquent charge shall not be collected more than once for the same default; and

(5) MAINTENANCE CHARGE. In addition thereto, a licensee may contract for, charge, receive, and collect a maintenance charge of \$3.00 for each month in the term of the loan contract on each loan made, whether repayable in one single payment or repayable in weekly, monthly, or other periodic installments. Refunds of unearned maintenance charges shall be made in accordance with the method prescribed in Code [Section 7-3-17](#), and such maintenance charges will be subject to paragraph (4) of this Code section. Nothing contained in Code [Section 7-4-18](#), as now or hereafter amended, shall be construed to apply to this paragraph; and loans made

in conformity with this paragraph shall in no way constitute a violation of Code [Section 7-4-18](#), as now or hereafter amended.

(Ga. L. 1904, p. 79, 10, 12; Civil Code 1910, 3458, 3459, 3461; Ga. L. 1920, p. 215, 13, 14; Code 1933, 25-213, 25-214, 25-216, 25-301, 25-313, 25-315, 25-317; Ga. L. 1935, p. 394, 1; Ga. L. 1955, p. 431, 15; Ga. L. 1964, p. 288, 5; Ga. L. 1975, p. 393, 2, 3; Ga. L. 1977, p. 288, 1; Ga. L. 1980, p. 509, 1, 3; Ga. L. 1981, p. 621, 1; Ga. L. 1989, p. 14, 7; Ga. L. 1997, p. 143, 7; Ga. L. 2001, p. 205, 1.)

### **7-3-15. Limitation on further charges.**

No licensee shall charge, contract for, or receive any other or further amount in connection with any loans authorized by this chapter in addition to those provided in Code [Section 7-3-14](#), except the actual lawful fees paid to a public official or agency of the state for filing, recording, or, on loans over \$100.00, the amount of the lawful premiums, no greater than such fees, actually paid for insurance against the risk of nonrecording or releasing any instrument securing the loan; the court costs and attorney fees authorized by law incurred in the collection of any contract in default; and the actual and reasonable expenses of repossessing, storing, and selling any collateral pledged as security for any contract in default. No licensee shall divide into separate parts any contract for the purpose or with the effect of obtaining charges in excess of those authorized by this chapter.

(Ga. L. 1904, p. 79, 10, 12; Civil Code 1910, 3459, 3461; Ga. L. 1920, p. 215, 13; Code 1933, 25-214, 25-216, 25-313, 25-316; Ga. L. 1935, p. 394, 2; Ga. L. 1955, p. 431, 16.)

### **7-3-16. Loans to pay contracts acquired by licensee restricted.**

No loan shall be made by any licensee for the purpose of paying all or any part of the amount owed on any note, bill of sale to secure debt, title retention contract, conditional sales contract, or any other similar contract which has been purchased by or assigned or transferred to such licensee for a period of at least 90 days from the date of such purchase or transfer.

(Ga. L. 1964, p. 288, 7.)

### **7-3-17. Payment before maturity; refund of prepaid interest; continuing insurance.**

Notwithstanding the provisions of any contract to the contrary, a borrower may at any time prepay all or any part of the unpaid balance to become payable under any installment contract. If the borrower pays the time balance in full before maturity, the licensee shall refund to him a portion of the prepaid interest, calculated in complete even months (odd days omitted), as follows: The amount of the refund shall represent at least as great a proportion of the total interest as the sum of the periodical time balance after the date of prepayment bears to the sum of all periodical time balances under the schedule of payments in the original contract. Where the amount of the refund due to anticipation of payment is less than \$1.00, no refund need be made. If the borrower has been required to purchase other than insurance coverage in a blanket policy when he has paid no acquisition cost, he shall have the option to continue such insurance in force

for the balance of the policy period, with all rights transferred to the borrower or his assigns, in which event no refund of insurance premiums shall be made to him.

(Ga. L. 1955, p. 431, 17.)

### **7-3-18. Delivery of copy of contract or itemized statement; receipts.**

At the time the loan is made, each licensee under this chapter shall deliver to the borrower or, if there are two or more, to one of them a copy of the loan contract or a written itemized statement in the English language showing in clear terms the date and amount of the loan, a schedule of the payments or a description thereof, the type of security for the loan, the licensee's name and address, the actual cash advanced to or on behalf of the borrower, the amount of each class of insurance carried and the premiums paid thereon, and the amount of interest and fees. Each licensee shall give a receipt for every cash payment made.

(Ga. L. 1904, p. 79, 6, 7; Civil Code 1910, 3454; Ga. L. 1920, p. 215, 14; Code 1933, 25-209, 25-314; Ga. L. 1955, p. 431, 19.)

### **7-3-19. Tax on interest - Levy; penalty for tax to charges.**

(a) In addition to all other taxes, fees, license fees, or other charges now or hereafter levied or assessed, there is levied a tax of 3 percent on the total amount of interest on any loan collected by any person licensed under this chapter from any borrower to whom such licensee has made a loan.

(b) Said tax is levied and assessed against the person so licensed and shall be paid by such person and shall not be added in any manner as an additional fee or charge against the borrower. Any person licensed under this chapter who adds such tax in any manner as an additional fee or charge against the borrower shall be liable for the recovery of triple the amount of such charge by action against the lender in any court of competent jurisdiction.

(c) As used in this Code section, the term "interest collected" means the gross amount of interest charged and collected on loan contracts, less any amount of unearned interest refunded to borrowers and such interest on such portion of uncollectable accounts that are charged off as bad debts by the licensee; except that, for those licensees whose records are kept on an accrual basis, the 3 percent tax levied in subsection (a) of this Code section shall be remitted on such portion of the interest as accrues during the taxable month.

(Ga. L. 1955, Ex. Sess., p. 57, 1; Ga. L. 1956, p. 86, 2; Ga. L. 1997, p. 143, 7.)

### **7-3-20. Tax on interest - Payment; inspection of records; rules and regulations.**

The tax provided for in Code [Section 7-3-19](#) shall be remitted to the Commissioner on or before the twentieth day of each month for the preceding calendar month. The Commissioner and his authorized agents and employees shall have the right to inspect all records of any person so licensed, and the Commissioner is authorized to promulgate rules and regulations relative to the enforcement of Code [Section 7-3-19](#), this Code section, and Code [Section 7-3-21](#).

(Ga. L. 1955, Ex. Sess., p. 57, 2; Ga. L. 1956, p. 86, 2; Ga. L. 1975, p. 1247, 2; Ga. L. 1989, p. 14, 7; Ga. L. 2004, p. 631, 7.)

### **7-3-21. Tax on interest - Penalties for late or fraudulent tax payments.**

In the event any person fails or refuses to remit the tax required by Code Sections 7-3-19 and 7-3-20 within the time prescribed, there shall be added to the tax a penalty equivalent to 25 percent of the tax but in no case shall the penalty so added be less than \$5.00. In the event any person fraudulently remits the incorrect tax, there shall be added to the tax a penalty equivalent to 50 percent of the tax but in no case shall the penalty so added be less than \$5.00. The amounts so added as penalties shall be collected as a part of the tax.

(Ga. L. 1955, Ex. Sess., p. 57, 3.)

### **7-3-22. Examinations, investigations, and hearings.**

(a) For the purpose of discovering violations of this chapter, the Commissioner or his duly authorized representative may from time to time examine the books, accounts, papers, and records of:

(1) Any licensee;

(2) Any person who advertises for, solicits, or holds himself out as willing to make loans in amounts of \$3,000.00 or less; or

(3) Any person whom the Commissioner has reason to believe is violating or is about to violate the provisions of this chapter.

(b) The Commissioner may subpoena witnesses, books, accounts, papers, and records; administer oaths; hold hearings; and take testimony under oath in conducting examinations and hearings authorized under this chapter.

(c) The cost of any such examination, investigation, or hearing, in the discretion of the Commissioner, may be charged to the licensee or person examined subject to review by the superior court under Code Section 7-3-27. The examinations, investigations, or hearings provided for in this Code section may be conducted at the state capitol or, in the discretion of the Commissioner, in the county wherein the business of the licensee is located or where the person required to have a license under this chapter is engaging in the business of making loans or elsewhere, upon the consent of the parties involved.

(Ga. L. 1904, p. 79, 8; Civil Code 1910, 3456; Ga. L. 1920, p. 215, 10; Code 1933, 25-211, 25-310; Ga. L. 1955, p. 431, 11; Ga. L. 1963, p. 370, 3; Ga. L. 1975, p. 393, 1; Ga. L. 1989, p. 14, 7.)

### **7-3-23. Cease and desist orders; enjoining violations.**

In the event the Commissioner shall find cause to believe that any person is violating this chapter or the rules and regulations promulgated by the Commissioner pursuant to this chapter, he shall make such investigation and have such hearings, before him or such person as he

designates, as will permit him to determine the facts and then may issue a cease and desist order if he so determines. If such cease and desist order is thereafter violated by the person against whom it is issued, such violation shall constitute a public nuisance; and the Commissioner is authorized to seek, and the superior courts shall grant, injunctions against such person's further violating this chapter or the lawful rules and regulations promulgated by the Commissioner pursuant to this chapter. Such action for injunction may be maintained notwithstanding the existence of other legal remedies or the pendency or successful completion of a criminal prosecution as for a misdemeanor.

(Ga. L. 1957, p. 331, 2; Ga. L. 1989, p. 14, 7; Ga. L. 1997, p. 143, 7.)

**7-3-24. Suspension or revocation of license - Grounds; procedure; effect of loss of license on contracts.**

(a) The Commissioner, upon ten days' written notice in the form of a show cause order to the licensee stating his contemplated action and in general the ground therefor and after giving the licensee a reasonable opportunity to be heard, subject to the right to review provided in Code [Section 7-3-27](#), may by order in writing suspend or revoke any license issued under this chapter if the Commissioner shall find that:

(1) The licensee has failed to pay the annual license fee or any fee required under this chapter;  
or

(2) The licensee has violated any provision of this chapter or any rule or regulation promulgated by the Commissioner under this chapter or has violated the terms of any cease or desist order entered by the Commissioner under Code [Section 7-3-23](#).

(b) Any such suspension or revocation shall not become final pending and subject to the right of review provided in Code [Section 7-3-27](#), but the court shall have and is granted power to enter such order as justice shall require pending hearing of such appeal. The court upon such appeal may tax the cost, including the cost of the hearing before the Commissioner, against the losing party.

(c) No suspension, revocation, relinquishment, or expiration of any license shall invalidate, impair, or affect the legality or obligations of any preexisting contracts or prevent the enforcement and collection thereof.

(Ga. L. 1904, p. 79, 4, 9, 15; Ga. L. 1920, p. 215, 6; Code 1933, 25-212, 25-217, 25-305, 25-306; Ga. L. 1955, p. 431, 12; Ga. L. 1963, p. 370, 4; Ga. L. 1989, p. 14, 7.)

**7-3-25. Suspension or revocation of license - Unreasonable collection tactics.**

(a) Any license shall be subject to suspension or revocation, after notice and hearing as provided for in Code [Section 7-3-24](#), in the event unreasonable collection tactics shall be willfully used by the licensee or any employee or agent thereof. Unreasonable collection tactics shall include, but not be limited to, any conduct by the licensee or any employee or agent thereof which:

(1) Causes the borrower or any member of his family to suffer bodily injury or physical harm;

(2) Constitutes a willful or intentional trespass by force of the borrower's home or his personal property without process of law;

(3) Holds up the borrower to public ridicule or unreasonably degrades him in the presence of his neighbors or business associates;

(4) Involves use of printed material which simulates or resembles a summons, warrant, or other legal process; or

(5) Although otherwise lawful, occurs at an unreasonable hour of the night. Attempts to make collections by means of personal visits, telephone calls, and the like shall be deemed to occur at an unreasonable hour of the night if they occur between the hours of 10:00 P.M. and 5:00 A.M.

(b) Any order or decision of the Commissioner on the matter of suspension or revocation shall be subject to review as provided for in Code [Section 7-3-27](#).

(Ga. L. 1964, p. 288, 6; Ga. L. 1989, p. 14, 7; Ga. L. 1997, p. 143, 7.)

#### **7-3-26. Probation and civil penalties for violations.**

In addition to all other penalties provided for under this chapter, the Commissioner shall have authority to place any licensee on probation for a period of time not to exceed one year for each and every act or violation of this chapter or of the rules and regulations of the Commissioner and may subject such licensee to a monetary penalty of up to \$1,000.00 for each and every act or violation of this chapter or of the rules and regulations of the Commissioner. If the licensee knew or reasonably should have known he was in violation of this chapter or the rules and regulations of the Commissioner, the monetary penalty provided for in this Code section may be increased to an amount up to \$5,000.00 for each and every act or violation.

(Ga. L. 1975, p. 1247, 1; Ga. L. 1989, p. 14, 7; Ga. L. 1997, p. 143, 7.)

#### **7-3-27. Judicial review of Commissioner's decisions.**

The decision of the Commissioner in granting or refusing to grant a license and in revoking or suspending such license and in any other order or decision authorized in this chapter shall be final, conclusive, and binding as to all determinations of fact made by him; but any applicant or licensee who deems himself aggrieved may have such decision reviewed under [Chapter 13 of Title 50](#), the "Georgia Administrative Procedure Act," for the review of contested cases.

(Ga. L. 1955, p. 431, 13; Ga. L. 1982, p. 3, 7; Ga. L. 1989, p. 14, 7.)

#### **7-3-28. Code Section 7-4-4 not repealed.**

Nothing in this chapter shall be construed as repealing Code [Section 7-4-4](#).

(Ga. L. 1955, p. 431, 22.)

**7-3-29. Criminal penalties; void loans; civil penalty to borrower for violation; violation not subject of class action; defense of good faith; limitation on remedies for voidness.**

(a) Any person who shall make loans under this chapter without first obtaining a license or who shall make a false statement under oath in an application for a license under this chapter or who shall do business while the license of such person under this chapter is suspended or revoked shall be guilty of a misdemeanor; and any contract made under this chapter by such person shall be null and void.

(b) Except as otherwise provided in this chapter, any duly licensed lender who fails to comply with this chapter in connection with a loan under this chapter shall be liable to the borrower or borrowers thereon for a single penalty in an amount equal to twice the amount of all interest and loan fees charged said borrower or borrowers on the most recent loan made by the lender to said borrower or borrowers; provided, however, that the liability under this subsection shall not be less than \$100.00.

(c) A lender duly licensed under this chapter has no liability under subsection (b) of this Code section if, within 15 days after discovering an error or violation and prior to the institution of an action under this Code section or the receipt of written notice of the error or violation, the lender notifies the person concerned of the error or violation and makes whatever adjustments in the appropriate account are necessary to ensure that such person will not be required to pay charges in excess of those permitted by this chapter.

(d) A lender may not be held liable in any action brought under this Code section for a violation of this chapter if the lender shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide clerical or typographical error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(e) A claim of violation of this chapter against a duly licensed lender may be asserted in an individual action only and may not be the subject of a class action under Code [Section 9-11-23](#) or any other provision of law. A claim of violation of this chapter against an unlicensed lender may be asserted in a class action under Code [Section 9-11-23](#) or any other provision of law.

(f) If a contract is made in good faith in conformity with an interpretation of this chapter by the appellate courts of this state or in a rule or regulation officially promulgated by the Commissioner after public hearings, no provision in this Code section imposing any penalty shall apply, notwithstanding that, after such contract is made, such rule or regulation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) Any lender duly licensed under this chapter who shall knowingly and willfully with intent to defraud a borrower make a contract in violation of this chapter shall be guilty of a misdemeanor, and the contract so made shall be null and void.

(h) No person may, more than one year after April 9, 1980, assert or contend offensively or defensively in any court that a contract predating April 9, 1980, is null and void or is illegal, void, invalid, or not good consideration for a renewal or refinanced contract. This subsection is a statute of repose and limitation, barring such remedies, and only such remedies, as of that date; provided, however, that after that date a borrower or borrowers on a contract predating April 9, 1980, shall be entitled to the appropriate penalty provided under subsections (a) through (g) of this Code section, but such right to said penalty shall not in any way adversely affect the validity of any renewal or refinanced contract.

(Ga. L. 1904, p. 79, 14; Ga. L. 1920, p. 215, 13, 17, 18; Code 1933, 25-217, 25-313, 25-317, 25-9902; Ga. L. 1935, p. 394, 2; Ga. L. 1955, p. 431, 20; Ga. L. 1978, p. 1033, 1; Ga. L. 1980, p. 1784, 1, 2; Ga. L. 1989, p. 14, 7; Ga. L. 2004, p. 60, 1.)