

*Regulations, Laws, and Administrative Policies
Governing the Sale and Issuance of Checks, Cashing
of Checks, and Money Transmission
in the State of Georgia*

**STATE OF GEORGIA
DEPARTMENT OF BANKING AND FINANCE**

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*Effective
August 22, 2011*

ARTICLES 4 & 4A OF THE OFFICIAL CODE OF GEORGIA ANNOTATED

This compilation of regulations, laws, and administrative policies governing the sale and issuance of checks, cashing of checks, and money transmission in the State of Georgia, including related laws and regulations for reporting large transactions in currency and certain suspicious activities, includes the Acts of the General Assembly of Georgia through the **2011** legislative session. A compilation of *The Financial Institutions Code of Georgia*, *The Uniform Commercial Code*, and *Regulations of the Georgia Department of Banking and Finance* may be obtained by calling the Georgia Bankers Association at 1-800-442-1061.

CHECK CASHING IN GEORGIA

Check cashing businesses in Georgia fall into one of two regulated categories – licensed or registered check cashing – and there is a remaining unregulated category of check cashing which is exempt. Please note below the statutory differences for each entity to determine into which category your check cashing business belongs.

Check Cashier Licensing, Registration, or Exemption

- ▶ **License** - A full service license is required if you charge a fee that exceeds the greater of \$2.00 or 2% of the face amount of the check. Advertising is permitted **ONLY** by *full service licensees*. Statutory limitations on fees charged apply. See Section 7-1-706.
- ▶ **Registration** - A registration is required if you charge a fee, the fee **DOES NOT** exceed the greater of \$2.00 or 2% of the face amount of the check, and you **DO NOT** advertise.

If no fees are charged, no license/registration is needed. License requirements as noted are based on amount of fees charged and the advertising of check cashing services. Please note the following examples.

Check Cashing Full Service License Required

- ▶ If your **fees** charged for check cashing services **EVER** exceed the greater of \$2 or 2% of the face amount of the check, then a full service **LICENSE** is required, regardless of whether or not you advertise such services.
- ▶ If your **fees** charged for check cashing services **NEVER** exceed the greater of \$2 or 2% of the face amount of the check, but you **DO** advertise such services, then a full service **LICENSE** is required.

Check Cashing Registration Required

- ▶ If your **fees** charged for check cashing services **NEVER** exceed the greater of \$2 or 2% of the face amount of the check, **AND** you **DO NOT** advertise such services, then an application as a **REGISTERED** check cashier is permitted.
- ▶ If you charge *any* fee and advertise the service, then a full service **LICENSE** is required.

Check Cashing Licensing or Registration Not Necessary

- ▶ If you **DO NOT** charge a **FEE** to cash a check – you **DO NOT** need to obtain a license or registration.

CHANGES – 2011 LEGISLATIVE SESSION CHANGES:

No changes made in 2011 to Title 7, Chapter 1, Article 4 or Article 4A of the Official Code of Georgia Annotated (O.C.G.A.).

CHANGES – 2011 REGULATIONS:

No changes applicable to Money Service Businesses.

IMPORTANT REMINDERS:

Background Checks

Check Sellers, Money Transmitters, and Check Cashers are required to perform background checks on all persons working in the licensed activity of the applicant, licensee or registrant **PRIOR TO HIRING** the individual. The law has always prohibited the hiring of felons to work in these regulated businesses. The requirement to perform the required background check *prior to hiring* to help ensure that felons are not working in the regulated business was added in 2007.

See **O.C.G.A. 7-1-682 (e)** relating to the requirement for check sellers and money transmitters, and **O.C.G.A. 7-1-702 (d)** for check cashier licensees and registrants.

License/Registration Transfers, Sales, etc.

The license or registration held by Check Sellers, Money Transmitters, or Check Cashers (licensees and registrants) is **not** transferable, assignable, or subject to a change of ownership without prior application to and approval by the department. See both Articles 4 and 4A.

See **O.C.G.A. 7-1-682 (f)** relating to the requirement for check sellers and money transmitters, and **O.C.G.A. 7-1-702 (e)** for check cashier licensees and registrants.

Administrative Actions

Information regarding the administrative action process for licensees and registrants may be found in **O.C.G.A. 7-1-689 (a) and (b)** for check sellers and money transmitters, and **O.C.G.A. 7-1-707 (b)** for check cashier licensees and registrants.

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ARTICLE 4
SALE OF CHECKS OR MONEY ORDERS

7-1-680. Definitions.

(a) As used in this article, the term or terms:

(1) "Check" means any check, money order, or any other instrument, order, or device for the payment or transmission of money or monetary value, whether or not it is a negotiable instrument under the terms of Article 3 of Title 11, relating to negotiable instruments. The term does not include a credit card voucher, letter of credit, or any other instrument that is redeemable by the issuer in goods or services.

(2) "Check holder" means a person who has purchased a check from a check seller or a person who has placed an order to transmit money with a money transmitter.

(3) "Licensee" means a person duly licensed by the department pursuant to this article.

(4) "Monetary value" means a medium of exchange whether or not redeemable in money.

(5) "Money transmission" means engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means including, but not limited to, an order, wire, facsimile, or electronic transfer.

(6) "Sale" and "selling" mean the passing of title from the seller or his or her agent to a holder or remitter for a price or an agreement to transfer money or monetary value for a price.

(b) Other statutory definitions applying to this article are:

(1) "Delivery" as defined in paragraph (14) of Code Section 11-1-201.

(2) "Issue" as defined in paragraph (a) of Code Section 11-3-105.

(3) "Sale of checks" or "issuance of checks" shall include money transmission.

(4) "Signed" as defined in paragraph (39) of Code Section 11-1-201.

7-1-681. License required.

No person or corporation, other than a bank or trust company, a credit union, a savings and loan association, or a savings bank, whether state or federally chartered, the deposits of which are federally insured, the authorized agent of a licensee, or the United States Postal Service shall engage in the business of selling or issuing checks without having first obtained a license under this article. This restriction applies to any nonresident person or corporation that engages in this state in the business of selling or issuing checks through a branch, subsidiary, affiliate, or agent in this state. A license for the sale of checks or money orders shall also qualify as a license for the business of money transmission. The provisions of this article shall also apply to the business of money transmission unless specifically excluded.

7-1-682. Qualifications of licensees; investments required; obtaining conviction data.

(a) In order to qualify for a license under this article, an applicant shall:

(1) Satisfy the department that it is financially sound and responsible and appears able to conduct the business of selling checks in an honest and efficient manner and with confidence and trust of the community; and

(2) Comply with the bonding requirements, furnish the statements, and pay the fees prescribed in this article. In the case of a money transmitter, the department may in its discretion require only a bond.

(b) In addition to the qualifications set forth in subsection (a) of this Code section, the department may require a licensee to maintain investments having an aggregate market value at least equal to the amount of outstanding checks issued or sold. The department may promulgate regulations establishing those investments which shall be deemed permissible investments for the purpose of complying with this subsection. Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding checks in the event of bankruptcy of the licensee.

(c) The department shall not issue such license or may revoke a license if it finds that the applicant or licensee, any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant or licensee, or any individual who directs the affairs or establishes policy for the applicant or licensee has been convicted of a felony involving moral turpitude in any jurisdiction or of a crime which, if committed within this state, would constitute a felony involving moral turpitude under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, unless such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process, and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, unless and until such plea of guilty or such decision, judgment, or verdict, shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction was had, or shall have received an official certification or pardon granted by the State Board of Pardons and Paroles which removes the legal disabilities resulting from such conviction and restores civil and political rights in this state.

(d) The department shall be authorized to obtain conviction data with respect to any applicant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant or licensee or any individual who directs the affairs or establishes policy for the applicant or licensee. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an applicant or any person who is director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant or licensee or any individual who directs the affairs or establishes policy for the applicant or licensee has a criminal record in a state other than Georgia, the department shall submit to the Georgia Crime Information Center two complete sets of fingerprints of such applicant or such person, the required records search fees, and such other information as may be required. Fees for background checks that the department administers shall be submitted to the department by applicants and licensees together with two completed sets of fingerprint cards. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if

there is no such finding. All conviction data received by the department shall be used by the department for the exclusive purpose of carrying out its responsibilities under this article, shall not be a public record, shall be privileged, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect the file. All such records shall be maintained by the department pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable. As used in this subsection, "conviction data" means a record of a finding, verdict, or plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(e) Every applicant and licensee shall be authorized and required to obtain and maintain the results of background checks on employees and agents working in or for the applicant or licensee. Such background checks shall be handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center. Applicants and licensees shall be responsible for any applicable fees charged by the Georgia Crime Information Center. An applicant or licensee shall only employ a person whose background data has been checked and been found to be satisfactory **prior to the initial date of hire**. This provision does not apply to directors, officers, partners, agents, or ultimate equitable owners of 10 percent or more or to persons who direct the company's affairs or establish policy, whose background must have been investigated through the department before taking office, beginning employment, or securing ownership. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an employee has a criminal record in any state other than Georgia, the employer shall submit to the department two complete sets of fingerprints of such person, together with the applicable fees and any other required information. The department shall then submit such fingerprints as provided in subsection (d) of this Code section.

(f) Such license issued by the department shall be kept conspicuously posted in the place of business of the licensee. Such license shall not be transferable, assignable, or subject to a change of ownership.

7-1-683. License application; fee; bonding; alternative deposit of assets for check sellers.

a) Each application for a license shall be in writing and under oath to the department, in such form as it may prescribe, and shall include the following:

(1) The legal name and principal office address of the corporation applying for the license;

(2) The name, residence, and business address of each director or equivalent official and of each officer who will be involved in selling checks in this state;

(3) The date and place of incorporation;

(4) If the applicant has one or more branches, subsidiaries, affiliates, agents, or other locations at or through which the applicant proposes to engage in the business of selling or issuing checks within the State of Georgia, the complete name of each and the address of each such location;

(5) The location where its initial registered office will be located in this state; and

(6) Such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, branches, subsidiaries, affiliates, or agents and any individual who directs the affairs or establishes policy for the applicant or licensee.

(b) The application shall be filed together with the following financial requirements:

(1) An investigation and supervision fee established by regulation of the department, which shall not be refundable but which, if the license is granted, shall satisfy the fee requirement for the first license year or the remaining part thereof; and

(2) A corporate surety bond issued by a bonding company or insurance company authorized to do business in this state and approved by the department. The bond for check sellers shall be in the principal sum of \$100,000.00, and the bond for money transmitters shall be in the principal sum of \$50,000.00. The amount of this bond shall be increased by an additional \$5,000.00 for each location, other than the licensee's primary place of business, at or through which the applicant proposes to engage in the business of selling or issuing checks in this state, until the principal sum of the bond shall total a maximum of \$250,000.00. In addition to the coverage provided for in this Code section, the department may require additional coverage for the adequate protection of check holders if the average daily balances outstanding for check sellers or, if the outstanding orders to transmit not yet paid for money transmitters, exceed \$250,000.00. Written reports that reveal a licensee's level of holdings shall be made at intervals during the year as required by regulations. If required by the department the additional coverage shall be limited to \$1,250,000.00 or the amount of the average daily balances or orders outstanding in the State of Georgia for the preceding year, whichever is less. The total maximum amount of such bond coverage under this paragraph and paragraph (1) of this subsection will be \$1,500,000.00. The bond shall be in a form satisfactory to the department and shall run to the State of Georgia for the benefit of any check holders against the licensee or his or her agents. The condition of the bond shall be that the licensee will pay any and all moneys that may become due and owing any creditor of or claimant against the licensee arising out of the licensee's business of selling or issuing checks in this state, whether through its own act or the acts of an agent. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. Claimants against the licensee may themselves bring an action directly on the bond. The liability arising under this paragraph shall be limited to the receipt, handling, transmission, and payment of money arising out of the licensee's business of selling or issuing checks in this state.

(c) As an option to the bond for check sellers, provided the department approves, in lieu of such corporate surety bond or bonds or of any portion of the principal thereof, the applicant may deposit with a Georgia state-chartered bank or trust company located in this state, as such applicant may designate and the department may approve, certificates of deposit insured by a federal agency, bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof or guaranteed by the United States or of the State of Georgia to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. These assets shall be held to secure the same obligations as would the surety bond and must be dedicated by the licensee solely for the purpose of meeting the financial obligations required to maintain the check seller license in this state and may not be dedicated to meet check seller licensing requirements for other jurisdictions; but the licensee shall be entitled to receive all interest thereon and shall have the right, with the approval of the department, to substitute other assets approved by this Code section for those deposited and shall be required to do so on written order of the department made for good cause shown; provided, however, if the licensee substitutes assets more than once during the license period the department may charge a fee for the processing of such substitution to be prescribed by regulations of the department. In the event of the failure or insolvency of such licensee, the assets, any proceeds therefrom, and the funds deposited pursuant to this Code section shall be applied to the payment in full of claims arising out of transactions in this state for the sale or issuance of checks. Failure to properly maintain dedicated assets for the purpose of meeting the financial requirements for licensure may result in a fine, or the revocation or suspension of the license, at the discretion of the department. This subsection shall apply to check sellers only and not to money transmitters.

7-1-684. Investigation of applicants; granting of licenses; single license for issuer and subsidiary seller.

Upon the filing of the application, accompanied by the documents and fee prescribed in Code Section 7-1-683, the department shall conduct an investigation to determine if the criteria established by Code Section 7-1-682

have been satisfied. If the department determines to its satisfaction that the criteria of Code Section 7-1-682 have been met, it shall issue to the applicant a license to engage in the business of selling and issuing checks in this state. A license issued pursuant to this article shall remain in force and effect through its expiration date unless earlier surrendered, suspended, or revoked pursuant to this article. Where a corporation engages only in the business of selling checks issued by another corporation which is primarily obligated for payment of the checks and the seller is a wholly owned subsidiary of or is wholly owned by the sole corporate shareholder of the issuer, the department may grant a single license naming both the seller and issuer as joint licensees. In such cases, only a single license fee shall be collected and only one corporate surety bond pursuant to Code Section 7-1-683 may be required where such bond names both the seller and issuer.

7-1-684.1. Examinations of books and records of licensee; fees; on-site examination; authority of commissioner.

(a) To assure compliance with the provisions of this article and in consideration of any application to renew a license pursuant to the provisions of Code Section 7-1-685, the department or its designated agent may examine the books and records of any licensee to the same extent as it is authorized to examine financial institutions under this chapter. Each licensee shall pay an examination fee as established by regulations of the department to cover the cost of such examination. The on-site examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state. The commissioner, in lieu of an on-site examination, may accept the examination report of an agency of another state or a report prepared by an independent accounting firm and reports so accepted shall be considered for all purposes as an official report of the commissioner. If the department determines, based on the records submitted to the department and past history of operations in the state, that an on-site examination is unnecessary then the on-site examination may be waived by the department.

(b) The commissioner may:

(1) Request financial data from a licensee in addition to that required under this article; and

(2) Conduct an on-site examination of a licensee, agent, or location of a licensee within this state without prior notice to the agent or licensee if the commissioner has a reasonable basis to believe that the licensee or agent is not in compliance with this article. The agent or licensee shall pay all reasonably incurred costs of the examination when the commissioner examines an agent's operations.

(c) The department, in its discretion, may:

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

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

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

(4) Disclose the imposition of an administrative fine or penalty under this article.

(d)(1) For the purpose of conducting any investigation as provided in this Code section, the department shall have the power to administer oaths, to call any party to testify under oath in the course of such investigations, to require the attendance of witnesses, to require the production of books, records, and papers, and to take the depositions of witnesses; and for such purposes the department is authorized to issue a subpoena for any witness

or for the production of documentary evidence. Such subpoenas may be served by certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address, by examiners appointed by the department, or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, records, or paper resides or is found. The required fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the department in the same manner that other expenses of the department are paid.

(2) The department may issue and apply to enforce subpoenas in this state at the request of a government agency regulating sellers of checks or money transmitters of another state if the activities constituting the alleged violation for which the information is sought would be a violation of this article if the activities had occurred in this state.

(e) In case of refusal to obey a subpoena issued under this article to any person, a superior court of appropriate jurisdiction, upon application by the department, may issue to the person an order requiring him or her to appear before the court to show cause why he or she should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished as contempt by the court.

(f) Examinations and investigations conducted under this article and information obtained by the department in the course of its duties under this article are confidential, except as provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70, the department is authorized to share information obtained under this article with other state and federal regulatory agencies or law enforcement authorities. In the case of such sharing, the safeguards to confidentiality already in place within such agencies or authorities shall be deemed adequate. The commissioner or an examiner specifically designated may disclose such limited information as is necessary to conduct a civil or administrative investigation or proceeding. Information contained in the records of the department which is not confidential and may be made available to the public either on the department's website or upon receipt by the department of a written request shall include:

- (1) The name, business address, and telephone, fax, and license numbers of a licensee or registrant;
- (2) The names and titles of the principal officers;
- (3) The name of the owner or owners thereof;
- (4) The business address of a licensee's or registrant's agent for service;
- (5) The terms of or a copy of any bond filed by a licensee or registrant; and
- (6) The name, business address, telephone number, and fax number of all agents of a licensee.

(g) In the absence of malice, fraud, or bad faith, a person is not subject to civil liability arising from the filing of a complaint with the department or furnishing other information required by this Code section or required by the department under the authority granted in this article. No civil cause of action of any nature shall arise against such person:

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

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

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

(h) The commissioner or any employee or agent is not subject to civil liability, and no civil cause of action of any nature exists against such persons arising out of the performance of activities or duties under this article or by publication of any report of activities under this Code section.

7-1-685. Renewal of licenses; annual license fee.

A license may be renewed for a period to be established by regulations of the department upon the filing of an application conforming to the requirements of Code Section 7-1-683 with such modifications as the department may allow. No investigation fee shall be payable in connection with such renewal application; but an annual license fee established by regulation of the department to defray the cost of supervision shall be paid with each renewal application, which fee shall not be refunded or prorated if the renewal application is approved.

7-1-686. Notice of action or change in number of locations; effect on bond or security deposit.

(a) A licensee shall give notice to the department by registered or certified mail of any action which may be brought against it and of any judgment which may be entered against it by any creditor or any claimant, with respect to a check sold or issued in this state, with details sufficient to identify the action or judgment, within 30 days after the commencement of any such action or the entry of any such judgment. The corporate surety shall, within ten days after it pays any claim to any creditor or claimant, give notice to the department by registered or certified mail of such payment with details sufficient to identify the claimant or creditor and the claim or judgment so paid. Whenever the principal sum of such bond is reduced by one or more recoveries or payments thereon, the licensee shall furnish a new or additional bond so that the total or aggregate principal sum of such bond or bonds shall equal the sum required under Code Section 7-1-683 or shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum thereof. The department may, by reasonable rules and regulations, provide for corresponding measures with respect to deposits made in lieu of a bond under subsection (c) of Code Section 7-1-683.

(b) A licensee shall give notice to the department by registered or certified mail or statutory overnight delivery of the name and address of any new or additional locations at which it engages in the business of selling or issuing checks over the number previously reported in either its original or renewal application and shall show to the department that the bond or assets required under Code Section 7-1-683 have been increased accordingly. This notice shall be given to the department by the licensee as follows:

(1) For the period January 1 through June 30 of each year, on or before the first business day of September; and

(2) For the period July 1 through December 31 of each year, on or before the first business day of March.

Failure to provide such notice shall be punished with a fine, other administrative action, or both. At any time the department is shown that a licensee has decreased the number of locations at or through which it proposes to engage in the business, the department may decrease the bond or security requirements accordingly.

(c) A bond filed with the department for the purpose of compliance with Code Section 7-1-683 may not be canceled by either the licensee or the corporate surety except upon notice to the department by registered or certified mail or statutory overnight delivery with return receipt requested, the cancellation to be effective not less than thirty (30) days after receipt by the department of such notice and only with respect to any breach of condition occurring after the effective date of such cancellation.

7-1-687. Agents of licensees.

A licensee may conduct its business at one or more locations in this state, so long as such locations have been included in the licensee's application and reports under Code Sections 7-1-683 and 7-1-686, and through such agents as it may designate. The department may within ten days after application, for cause, refuse to approve a licensee's designation of an agent or, for cause, suspend a licensee's designation of an agent. In such cases the agent shall have the same procedural rights as are provided in this article for the denial, suspension, or revocation of a licensee's license. No additional license other than that obtained by the licensee shall be required of any duly reported agent of a licensee. An agent of a licensee shall sell or issue checks only at the location designated in the licensee's report to the department or at other locations of which the department first has been notified in writing.

7-1-687.1 Required records for five-year period; form; location of records.

(a) Each licensee shall make, keep, and reserve the following books, accounts, and other records for a period of five years:

(1) A record of each check sold;

(2) A general ledger which shall be posted at least monthly containing all assets, liabilities, capital, and income and expense accounts;

(3) Settlement sheets received from agents;

(4) Bank statements and bank reconciliation records;

(5) Records of outstanding checks;

(6) Records of each check paid;

(7) A list of the names and addresses of all of the licensee's agents;

(8) A copy of all Currency Transaction Reports that are required to be filed by the licensee; and

(9) For money transmitters, records of all money transmissions sent or received.

(b) Records required to be made, kept, and reserved pursuant to subsection (a) of this Code section may be maintained in a photographic, electronic, or other similar form.

(c) Records required to be made, kept, and reserved pursuant to subsection (a) of this Code section may be maintained at a location outside the state so long as such records are made accessible to the commissioner within ten days of the date of a written notice by the commissioner to the licensee.

7-1-688. Rules and regulations.

Without limitation on the power conferred by Article 1 of this chapter, the department may make reasonable rules and regulations, not inconsistent with law, for the enforcement of this article.

7-1-689. Denial, suspension, and revocation of license or designation of agent.

(a) The department may suspend or revoke an original or renewal license or the designation of an agent of a licensee on any ground on which it might refuse to issue an original license or for a violation of any provision of this article or any rule or regulation issued under this article or for failure of the licensee to pay, within 30 days after it becomes final, a judgment recovered in any court within this state by a claimant or creditor in an action arising out of the licensee's business in this state of selling or issuing checks. If a cease and desist order is issued by the department to a licensee who has been sent a notice of bond cancellation and if the required bond is reinstated or replaced and such documentation is delivered to the department within the 30 day period following the date of issuance of the order, the order shall be rescinded. If the notice of reinstatement of the bond is not received by department within the 30 days, the license shall expire at the end of the 30 day period and the licensee shall be required to make a new application for a license and pay all applicable fees.

(b) Notice of the department's intention to enter an order denying an application for a license under this article or of an order suspending or revoking a license under this article shall be given to the applicant or licensee in writing, sent by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant or licensee. Within 20 days of the date of the notice of intention to enter an order of denial, suspension, or revocation under this article, the applicant or licensee may request in writing a hearing to contest the order. If a hearing is not requested in writing within 20 days of the date of such notice of intention, the department shall enter a final order regarding the denial, suspension, or revocation. Any final order of the department denying, suspending, or revoking a license shall state the grounds upon which it is based and shall be effective on the date of issuance. A copy thereof shall be forwarded promptly by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant or licensee. If a person refuses to accept service of the notice or order by registered or certified mail or statutory overnight delivery, the notice or order shall be served by the commissioner or the commissioner's authorized representative under any other method of lawful service; and the person shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the notice or order. This liability shall be paid upon notice and demand by the commissioner or the commissioner's representative and shall be assessed and collected in the same manner as other fees or fines administered by the commissioner.

(c) A decision of the department denying a license, original or renewal shall be conclusive, except that it may be subject to judicial review under Code Section 7-1-90. A decision of the department suspending or revoking a license shall be subject to judicial review in the same manner as a decision of the department to take possession of the assets and business of a bank under Code Section 7-1-155.

7-1-689.1. Cease and desist order for noncompliance; penalty; jurisdiction for judicial review; "person" defined; administrative penalties.

(a) Whenever it shall appear to the department that any person has violated any law of this state or any order or regulation of the department under this article or is operating without a required license, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices. Such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request for a hearing within such 20 day period. The hearing shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." A cease and desist order issued to an unlicensed person that orders such person to cease doing business without the appropriate license shall be final 30 days from the date of issuance and there shall be no opportunity for an administrative hearing. If the proper license or evidence of exemption for the time period cited in the order is obtained within the 30 day period, the order shall be rescinded by the department. Any cease and desist order sent to the person at both his or her personal and business addresses pursuant this Code section that is returned to the department as "refused" or "unclaimed" shall be deemed as received and sufficiently served.

(b) Whenever a person shall fail to comply with the terms of an order of the department which has been properly issued under the circumstances, the department may, through the Attorney General and upon notice of three (3) days to such person, petition the principal court for an order directing such person to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition the court shall allow a motion to show cause why it should not be granted. After a hearing upon the merits or after failure of such person to appear when ordered, the court shall grant the petition of the department upon a finding that the order of the department was properly issued.

(c) Any person who violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed \$1,000.00. Each day the violation continues shall constitute a separate offense. In determining the amount of a penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to being imposed or has been imposed pursuant to this Code section. Any person assessed pursuant to this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the licensee involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(d) Initial judicial review of a decision of the department entered pursuant to this Code section shall be available solely in the superior court of the county of domicile of the department.

(e) For purposes of this Code section, the term "person" includes an individual, any entity required to be licensed, and a licensee, officer, director, employee, agent, or other person participating in the conduct of the affairs of the person subject to the orders issued pursuant to this Code section.

(f) In addition to any other administrative penalties authorized by this article, the department may by regulation prescribe administrative fines for violations of this article and of any rules promulgated by the department pursuant to this article.

7-1-689.2 Employment of persons subject to outstanding cease and desist orders

The department may not issue a license to an applicant and may revoke a license from a licensee if such person employs any other person against whom a final cease and desist order has been issued within the preceding five years if such order was based on a violation of this article. Each applicant and licensee shall, before hiring an employee, examine the department's public records to determine that such employee is not subject to a cease and desist order."

7-1-690. Assignment of claims to department for collection.

At the written request of any claimant or creditor of a licensee whose claim is based on a transaction in this state for the sale or issuance of a check subject to regulation under this article, the department may, in its discretion, take an assignment of such claim in trust for the benefit of the assigning claimant or creditor and may bring any legal action necessary to collect such claim. Two or more such claims against a licensee may be combined in one such action.

7-1-691. Civil liability of licensee on checks.

Every check issued in the conduct of the business regulated by this article shall be signed by the licensee or his authorized representative; and the licensee shall be liable for the payment thereof to the same extent as a

drawer of a negotiable instrument, whether or not the check is a negotiable instrument under Article 3 (Negotiable Instruments) of Title 11 (Uniform Commercial Code).

7-1-692. Prohibited transactions.

(a) No person or corporation shall sell checks as an agent of a principal seller when such principal seller is subject to licensing under this article but has not obtained a license hereunder; and any person who does so shall be deemed to be the principal seller thereof and not merely an agent and shall be liable to the holder or remitter as the principal seller.

(b) No person or corporation, other than a bank or trust company, an agent thereof, a licensee, or an agent of a licensee, shall undertake, in the course of carrying on the business regulated in this article, to receive, transmit, or handle money on behalf of another to whom he issues a money order or a similar payment paper; and any person who does so shall be liable to the owner of the money order or similar payment paper for the payment thereof to the same extent as a drawer of a negotiable instrument, whether or not the money order or similar payment paper is a negotiable instrument under Article 3 (Negotiable Instruments) of Title 11 (Uniform Commercial Code).

(c) No person required to be licensed under this article shall purposely withhold, delete, destroy, or alter information requested by an examiner or other official of the department or make false statements or material misrepresentations to the department.

(d) All licensees or agents of licensees shall transmit monies received by them within five business days of receiving such monies, unless the licensee's written terms and conditions call for an agent to make an earlier transmission of funds. Failure to timely transmit funds shall subject the licensee to fines and may result in the revocation of its license. In the case of an agent, failure to timely transmit funds may result in the imposition of fines and the designation of a licensee's agent being refused or suspended by the department.

ARTICLE 4A
CASHING CHECKS, DRAFTS, OR MONEY ORDERS FOR CONSIDERATION

7-1-700. Definitions.

As used in this article, the term:

(1) "Check casher" means an individual, partnership, association, or corporation engaged in cashing checks, money orders, or other drafts for a fee. Such fee may be payable in cash, in the form of exchange of value in excess of regular retail value, in the form of mandatory purchase of goods or services by patrons or in the form of the purchase of catalog items or coupons or other items indicating the ability to receive goods, services, or catalog items.

(2) "Licensed casher of checks" means any individual, partnership, association, or corporation duly licensed by the Department of Banking and Finance to engage in business pursuant to the provisions of this article.

(3) "Licensee" means a licensed casher of checks, drafts, or money orders.

(4) "Registered casher of checks" or "registrant" means any individual, partnership, association, or corporation engaged in cashing checks, money orders, or other drafts for a fee limited to the greater of \$2.00 or 2 percent of the face amount of the check. Such fee may be payable in cash, in the form of exchange of value in excess of regular retail value, in the form of mandatory purchase of goods or services by patrons or in the form of the purchase of catalog items or coupons or other items indicating the ability to receive goods, services, or catalog items. A registered check casher shall not advertise its check cashing services and shall be duly registered by the Department of Banking and Finance to engage in business pursuant to the provisions of this article.

7-1-701. Licensure; written application.

(a) No person, partnership, association, or corporation shall engage in the business of cashing checks, drafts, or money orders for a consideration without first obtaining a license or registration under this article. The term "consideration" shall include any premium charged for the sale of goods in excess of the cash price of such goods.

(b) Each application for a license or registration shall be in writing and under oath to the department, in such form as the department may prescribe, and shall include the following:

(1) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;

(2) The location where the initial registered office of the applicant will be located in this state;

(3) The complete address of any other locations at which the applicant proposes to engage in cashing checks; and

(4) Such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, or agents.

(c) The application for license or registration shall be filed together with an investigation and supervision fee established by regulation which shall not be refundable but which, if the license or registration is granted, shall satisfy the fee requirement for the first licensed or registered year or the remaining part thereof.

7-1-702. Background investigation; effect of past convictions; conviction data; license posting requirements; term of license.

(a) The department shall conduct an investigation of every applicant for license or registration to determine the financial responsibility, experience, character, and general fitness of the applicant. If the department determines to its general satisfaction:

(1) That the applicant is financially responsible and appears to be able to conduct the business of cashing checks in an honest, fair, and efficient manner and with the confidence and trust of the community; and

(2) That the granting of such application will promote the convenience and advantage of the area in which the business is to be conducted, the department shall issue the applicant a license or registration to engage in the business of cashing checks.

(b) The department shall not issue such a license or registration or may revoke a license or registration if it finds that the applicant, licensee, or registrant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant, licensee, or registrant or any individual who directs the affairs or establishes policy for the applicant, licensee, or registrant has been convicted of a felony involving moral turpitude in any jurisdiction or of a crime which, if committed within this state, would constitute a felony involving moral turpitude under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, unless such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, unless and until such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction was had, or shall have received an official certification or pardon granted by the State Board of Pardons and Paroles which removes the legal disabilities resulting from such conviction and restores civil and political rights in this state.

(c) The department shall be authorized to obtain conviction data with respect to any applicant, licensee, or registrant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant, licensee, or registrant or any individual who directs the affairs or establishes policy for the applicant, licensee, or registrant. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an applicant, licensee, or registrant or any person who is a director, officer, partner, agent, employee or ultimate equitable owner of 10 percent or more of the applicant, licensee, or registrant or any individual who directs the affairs or establishes policy for the applicant, licensee, or registrant has a criminal record in a state other than Georgia, the department shall submit to the Georgia Crime Information Center two complete sets of fingerprints of such applicant or such person, the required records search fees, and such other information as may be required. Fees for background checks that the department administers shall be submitted to the department by applicants, licensees, or registrants together with two complete sets of fingerprints. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department shall be used by the department for the exclusive purpose of carrying out its responsibilities under this article, shall not be a public record, shall be privileged, and shall not be

disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect the file. All such records shall be maintained by the department pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable. As used in this subsection, "conviction data" means a record of a finding, verdict, or plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(d) Every applicant, licensee, and registrant shall be authorized and required to obtain and maintain the results of background checks on employees working in the licensed business. Such background checks shall be handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center. Applicants, licensees, and registrants shall be responsible for any applicable fees charged by the Georgia Crime Information Center. An applicant, licensee, or registrant may only employ a person whose background data has been checked and been found to be satisfactory **prior to the initial date of hire**. This provision does not apply to directors, officers, partners, agents, or ultimate equitable owners of 10 percent or more or to persons who direct the company's affairs or establish policy, whose background must have been investigated through the department before taking office, beginning employment, or securing ownership. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an employee has a criminal record in any state other than Georgia, the employer shall submit to the department two complete sets of fingerprint cards for such person, together with the applicable fees and any other required information. The department shall submit such fingerprints as provided in subsection (c) of this Code section.

(e) Such license or registration shall be kept conspicuously posted in the place of business of the licensee or registrant. Such license or registration shall not be transferable, assignable or subject to a change of ownership without prior application to and approval by the department.

(f) Except as otherwise specifically provided in this article, all licenses and registrations issued pursuant to this article shall expire on September 30 of each year, and application for renewal shall be made annually on or before August 1 of each year. Any new license or registration granted after July 1 in any year will not be required to be renewed until the next calendar year renewal period.

7-1-703. License renewal.

A license or registration may be renewed for a period to be established by regulations of the department upon the filing of an application substantially conforming to the requirements of Code Section 7-1-701 with such modifications as the department may specify and as may be necessary. No investigation fee shall be payable in connection with such renewal application; but an annual license or registration fee established by regulation of the department to defray the cost of supervision shall be paid with each renewal application, which fee shall not be refunded or prorated if the renewal application is approved.

7-1-704 Rules and regulations for enforcement of article; examination of books and records of licensee.

(a) Without limitation on the power conferred by Article 1 of this chapter, the department may make reasonable rules and regulations, not inconsistent with law, for the interpretation and enforcement of this article.

(b) To assure compliance with the provisions of this article and in consideration of any application to renew a license or registration pursuant to the provisions of Code Section 7-1-703, the department or its designated agent may examine the books and records of any licensee or registrant to the same extent as it is authorized to examine financial institutions under this chapter. Each licensee or registrant shall pay an examination fee as established by

regulations of the department to cover the cost of such examination. The department, in its discretion, may:

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

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

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

(4) Disclose the imposition of an administrative fine or penalty under this article."

(c) To assure compliance with the provisions of this article, the department may review the fees charged and fee income of any person cashing checks for a fee who claims exemption from licensing or claims to be a registered casher of checks. Each person who is reviewed shall pay an hourly fee as provided in departmental regulations when the review requires more than four examiner hours and the review results in a finding that a license or registration is required. The department, in its discretion, may permit the party claiming exemption or registration to supply to the department the necessary books and records for its review at department headquarters.

(d) The department shall remit all examination fees paid by licensees and registrants in accordance with Code Section 7-1-43, net of any cost paid to third parties authorized by the department to perform such examination services.

(e)(1) For the purpose of conducting any investigation as provided in this Code section, the department shall have the power to administer oaths, to call any party to testify under oath in the course of such investigations, to require the attendance of witnesses, to require the production of books, records, and papers, and to take the depositions of witnesses; and for such purposes the department is authorized to issue a subpoena for any witness or for the production of documentary evidence. Such subpoenas may be served by certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address, by examiners appointed by the department, or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, records, or paper resides or is found. The required fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the department in the same manner that other expenses of the department are paid.

(2) The department may issue and apply to enforce subpoenas in this state at the request of a government agency regulating check cashing of another state if the activities constituting the alleged violation for which the information is sought would be a violation of this article if the activities had occurred in this state.

(f) In case of refusal to obey a subpoena issued under this article to any person, a superior court of appropriate jurisdiction, upon application by the department, may issue to the person an order requiring him or her to appear before the court to show cause why he or she should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished as contempt by the court.

(g) Examinations and investigations conducted under this article and information obtained by the department in the course of its duties under this article are confidential, except as provided in this subsection pursuant to the provisions of Code Section 7-1-70. In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70, the department is authorized to share information obtained under this article with other state and federal regulatory agencies or law enforcement authorities. In the case of such sharing, the safeguards to confidentiality already in place within such agencies or authorities shall be deemed adequate. The commissioner or an examiner

specifically designated may disclose such limited information as is necessary to conduct a civil or administrative investigation or proceeding. Information contained in the records of the department that is not confidential and may be made available to the public either on the department's website or upon receipt by the department of a written request shall include:

- (1) The name, business address, and telephone, fax, and license numbers of a licensee or registrant;
- (2) The names and titles of the principal officers;
- (3) The name of the owner or owners thereof;
- (4) The business address of a licensee's or registrant's agent for service; and
- (5) The name, business address, telephone number, and fax number of all locations of a licensee.

(h) In the absence of malice, fraud, or bad faith, a person is not subject to civil liability arising from the filing of a complaint with the department or furnishing other information required by this Code section or required by the department under the authority granted in this article. No civil cause of action of any nature shall arise against such person:

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

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

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

(i) The commissioner or any employee or agent is not subject to civil liability, and no civil cause of action of any nature exists against such persons arising out of the performance of activities or duties under this article or by publication of any report of activities under this Code section."

7-1-705. Notice to be posted by licensee; record-keeping requirements; check cashing procedures; prohibited advertising; procedure on notice of illegal act involving check.

(a) In every location licensed or registered under this article, there shall be conspicuously posted and at all times displayed a notice stating the charges for cashing checks.

(b) Each licensee or registrant shall keep and use in its business such books, accounts, and records as the department may require to carry into effect the provisions of this article and the rules and regulations. Every licensee or registrant shall preserve such books, accounts, and records for at least two years.

(c) Before a licensee or registrant shall deposit with any bank a check, draft, or money order cashed by such licensee or registrant, the same must be endorsed with the actual name under which such licensee or registrant is doing business.

(d) (1) No licensee or registrant shall receive any check, draft, or money order with payment deferred pending collection. Payment shall be made immediately in cash for every check, draft, or money order accepted by the licensee or registrant.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, drafts may be accepted for collection with payment deferred where the licensee or registrant has posted a surety bond in the same manner as prescribed for check sales licensees under Code Section 7-1-683. The amount of the surety bond shall be \$10,000.00 for each location operated by the licensee or registrant if the licensee or registrant operates three or fewer locations. For a fourth or fifth location operated by a licensee or registrant, the amount of the surety bond shall be \$5,000.00 for each such location. For each location operated by a licensee or registrant in excess of a fifth location, the amount of the surety bond shall be \$1,000.00. In no event shall payment of a draft be deferred past the time that the licensee or registrant has collected on the draft. Upon collection, payment shall be made immediately to the party from whom the licensee or registrant accepted the draft.

(e) No licensee or registrant shall cash a check, draft, or money order made payable to a payee other than a natural person unless such licensee or registrant has previously obtained appropriate documentation from the executive entity of such payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.

(f) No licensee or registrant shall cash checks without identification of the bearer of such check, and any person seeking to cash a check shall be required to submit such reasonable identification as shall be prescribed by the department; provided, however, the provisions of this subsection shall not prohibit a licensee or registrant from cashing a check simultaneously with the verification and establishment of the identity of the presenter by means other than the presentation of identification.

(g) Within five business days after being advised by the payor financial institution that a check, draft, or money order has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or represents the proceeds of illegal activity, the licensee or registrant shall notify the department and the district attorney for the judicial circuit in which the check was received. In the event a check, draft, or money order is returned to the licensee or registrant by the payor financial institution for any of the aforementioned reasons, the licensee or registrant may not release the check, draft, or money order without the consent of the district attorney or other investigating law enforcement authority.

7-1-706. Check-cashing fees.

(a) No licensed casher of checks shall:

(1) Charge check-cashing fees, except as otherwise provided in this Code section, in excess of 5 percent of the face amount of the check or draft or \$5.00, whichever is greater;

(2) Charge check-cashing fees in excess of 3 percent of the face amount of the check or draft or \$5.00, whichever is greater, if such check or draft is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of such check or draft; or

(3) Charge check-cashing fees for personal checks or money orders in excess of 10 percent of the face amount of the personal check or money order or \$5.00, whichever is greater.

(b) No registered casher of checks shall charge check-cashing fees, except as otherwise provided in this Code section, in excess of 2 percent of the face amount of the check or draft or \$2.00, whichever is greater.

7-1-707 Suspension or revocation of license

(a) The department may suspend or revoke any license or registration issued pursuant to this article if:

(1) It shall find that the licensee or registrant has:

(A) Committed any fraud, engaged in any dishonest activities, or made any misrepresentation;

(B) Violated any provisions of the banking law or any regulation issued pursuant thereto or has violated any other law in the course of its, his or her dealings as a licensed or registered casher of checks;

(C) Made a false statement in the application for such license or registration or failed to give a true reply to a question in such application;

(D) Demonstrated his, her or its incompetency or untrustworthiness to act as a licensed or registered casher of checks;

(E) Purposely withheld, deleted, destroyed, or altered information requested by an examiner of the department or made false statements or material misrepresentations to the department; or

(F) Charged check-cashing fees, exclusive of direct costs of verification, in unconscionable amounts which do not adequately reflect:

(i) The level of risk associated with the cashing of checks of a particular class using ordinary prudence and commercially reasonable standards of identification and acceptance;

(ii) The cost of funds necessary to operate a check-cashing business; and

(iii) The extraordinary costs for security safeguards associated with the business location of the licensee or registrant; or

(2) It shall find that any ground or grounds exist which would require or warrant the refusal of an application for the issuance of the license if such an application were then before it.

(b) Notice of the department's intention to enter an order denying an application for a license or registration under this article or of an order suspending or revoking a license or registration under this article shall be given to the applicant, licensee, or registrant, in writing, sent by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant, licensee or registrant. Within 20 days of the date of the notice of intention to enter an order of denial, suspension, or revocation under this article, the applicant, licensee, or registrant may request in writing a hearing to contest the order. If a hearing is not requested in writing within 20 days of the date of such notice of intention, the department shall enter a final order regarding the denial, suspension, or revocation. Any final order of the department denying, suspending, or revoking a license or registration shall state the grounds upon which it is based and shall be effective on the date of issuance. A copy thereof shall be forwarded promptly by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant, licensee, or registrant. If a person refuses to accept service of the notice or order by registered or certified mail or statutory overnight delivery, the notice or order shall be served by the commissioner or the commissioner's authorized representative under any other method of lawful service; and the person shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the notice or order. This liability shall be paid upon notice and demand by the commissioner or the commissioner's representative and shall be assessed and collected in the same manner as other fees or fines administered by the commissioner.

(c) A decision of the department denying a license or registration, original or renewal, shall be conclusive, except that it may be subject to judicial review under Code Section 7-1-90. A decision of the department suspending or revoking a license or registration shall be subject to judicial review in the same manner as a decision of the department to take possession of the assets and business of a bank under Code Section 7-1-155.

(d) The provisions of this Code section shall not apply when a license is denied or suspended as provided in Code Section 7-1-707.1.

(e)(1) Whenever it shall appear to the department that any person has violated any law of this state or any order or regulation of the department under this article, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices. Such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request within such 20 day period for a hearing. The hearing shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." A cease and desist order to an unlicensed or unregistered person that orders such person to cease doing a check-cashing business without the appropriate license or registration shall be final 30 days from the date of issuance, and there shall be no opportunity for an administrative hearing. If the proper license or registration or evidence of exemption is obtained within the 30 day period, the order shall be rescinded by the department. Any cease and desist order sent to the person at both his or her personal and business addresses pursuant this Code section that is returned to the department as "refused" or "unclaimed" shall be deemed as received and sufficiently served.

(2) Whenever a person shall fail to comply with the terms of an order of the department which has been properly issued under the circumstances, the department, upon notice of three days to such person, may, through the Attorney General, petition the principal court for an order directing such person to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why it should not be granted. Whenever, after a hearing upon the merits or after failure of such person to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(3) Any person who violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed \$1,000.00. Each day the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. Any person assessed as provided in this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the licensee or registrant involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(4) Initial judicial review of the decision of the department entered pursuant to this Code section shall be available solely in the superior court of the county of domicile of the department.

(5) For purposes of this Code section, the term "person" includes an individual, any entity required to be licensed or registered, licensees, registrants, or an officer, director, employee, agent, or other person participating in the conduct of the affairs of the person subject to the orders issued pursuant to this Code section.

(6) In addition to any other administrative penalties authorized by this article, the department may, by regulation, prescribe administrative fines for violations of this article and of any rules promulgated by the department pursuant to this article.

7-1-707.1 Suspension or denial of license to student borrowers in default and not in satisfactory repayment status.

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

(1) “Agency” means the Georgia Higher Education Assistance Corporation created in Code Section 20-3-263 which is responsible for administering a program of guaranteed educational loans to eligible students and eligible parents known as the Georgia Higher Education Loan Program.

(2) “Borrower” means an individual who borrowed a guaranteed educational loan under the Georgia Higher Education Loan Program.

(3) “Default” means default as defined by federal law under the Higher Education Act of 1965.

(4) “Satisfactory repayment status” means the borrower has agreed to repay the defaulted loan to the agency and has made a payment in the most recent prior 60 days.

(b) The department shall suspend, as provided for in Code Section 20-3-295, the license of any check casher upon receipt of a record from the agency stating that such license is a borrower in default who is not in satisfactory repayment status.

(c) The department shall deny, as provided for in Code Section 20-3-295, the application or renewal of any applicant or licensee upon receipt of a record from the agency stating that such applicant or licensee is a borrower in default who is not in satisfactory repayment status.

(d) Notwithstanding any other provisions of law, the hearings and appeals procedures provided for in Code Section 20-3-295, where applicable, shall be the only such procedures required to suspend a license or deny the issuance or renewal of an application for a license under this article.

7-1-707.2 Employment of persons subject to outstanding cease and desist orders

The department may not issue a license or registration to an applicant and may revoke a license from a licensee or a registration from a registrant if such person employs any other person against whom a final cease and desist order has been issued within the preceding five years if such order was based on a violation of this article. Each applicant, licensee and registrant shall, before hiring an employee, examine the department's public records to determine that such employee is not subject to a cease and desist order.

7-1-707.3 Mobile Check Cashing

The operation of a mobile check cashing facility must be conducted in accordance with the rules of the department.

7-1-708 Violation of article.

Any person, partnership, association, or corporation and the several members, officers, directors, agents, and employees thereof who shall violate any of the provisions of this article shall be guilty of a misdemeanor and shall be punishable by imprisonment for not more than one year or by a fine of not more than \$500.00, or by both such fine and imprisonment.

7-1-709 Applicability of article.

(a) This article shall not apply to any bank, trust company, credit union, building and loan association, or savings and loan association which is chartered under the laws of this state or under federal law and which has lawfully entered this state to engage in a banking business.

(b) This article shall not apply to any individual, partnership, association, or corporation which cases checks for which **no fee** is charged.

ARTICLE 9 CRIMINAL AND RELATED PROVISIONS

7-1-845. Miscellaneous felonies; when punished as misdemeanors.

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

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

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

(3) Willfully engages in the business of:

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

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

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

(D) Selling checks before receiving a license as required by Code Section 7-1-681;

(E) An international bank agency before receiving the license required by Code Section 7-1-713;

(F) A business development corporation before approval of the department is granted under Code Section 7-1-743;

(G) A building and loan association before its articles are approved; or

(H) Transacting business either directly or indirectly as a mortgage broker or mortgage lender unless licensed by the department or exempt from licensing pursuant to Code Section 7-1-1001; or

(4) Being an agent of a licensee or such agent's employee who is authorized to sell or issue checks on behalf of a licensee, issues checks directly or indirectly to or for his own benefit, or sells or issues checks without accepting funds therefor or sells or issues checks and willfully fails to remit to the licensee the proceeds from the

sale or issuance of such checks within five business days from the date of such sale or issuance.

(b) Upon conviction under this Code section such person or corporation shall be punished by imprisonment for not less than one nor more than five years or fined \$10,000.00; but, on the recommendation of the jury trying the case, when such recommendation is approved by the judge presiding on the trial, such crime shall be punished as a misdemeanor. If the judge trying the case deems it proper, he may, in fixing the punishment, reduce such felony to a misdemeanor.

7-1-846. Punishment for misdemeanor violations.

Upon conviction of a misdemeanor as prescribed by the several provisions of this chapter, the offender shall be punished as prescribed by Code Section 17-10-3, as now or hereafter amended.

**ARTICLE 11
RECORDS AND REPORTS OF CURRENCY TRANSACTIONS**

7-1-910. Purpose.

It is the purpose of this article to require certain reports and records of transactions involving United States currency where such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

7-1-911. Definitions.

As used in this article, the term:

- (1) "Commissioner" means the commissioner of banking and finance.
- (2) "Conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.
- (3) "Currency" means currency and coin of the United States.
- (4) "Currency transaction" means a transaction:

(A) Initiated from the receipt or payment of currency or concluding with the receipt or payment of currency;
or

(B) Involving the movement or transfer of monetary value by electronic means other than within the books of account of the same financial institution.

(5) "Department" means the Department of Banking and Finance of the State of Georgia.

(6) "Financial institution" means:

- (A) A state or national bank;
- (B) A trust company;

(C) A building and loan association, state savings and loan association, or a federal savings and loan association;

(D) A state or federal credit union;

(E) An international bank agency doing business in this state on April 1, 1975, pursuant to the former "International Bank Agency Act," approved April 6, 1972 (Ga. L. 1972, p. 1140), or authorized to do business in this state pursuant to Article 5 of this chapter; or

(F) A licensee under Article 4 or Article 4A of this chapter and such other persons as may be engaged in the business of:

(i) Cashing checks for a fee; or

(ii) Performing transactions by wire or other electronic means to facilitate the movement or transfer of money.

(7) "Knowing that the moneys involved in a currency transaction represent the proceeds of some form of unlawful activity" means that the person knew the moneys involved in the transaction represented proceeds from some form, although not necessarily which form, of activity that constitutes a felony under this Code.

(8) "Monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

(9) "Person" means natural persons, partnerships, trusts, estates, associations, corporations, and all entities cognizable as legal personalities.

(10) "Specified unlawful activity" means any act or activity constituting an offense punishable as a felony pursuant to the laws of this state or any act or acts constituting a pattern of racketeering activity as that term is defined in Code Section 16-14-3.

(11) "Transaction" includes:

(A) A purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition and, with respect to a financial institution, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected; or

(B) The movement of funds by wire or other means or involving one or more monetary instruments or the use of a financial institution.

7-1-912. Records and reports of certain currency transactions; regulations; commissioner's authority under Code Section 7-1-64; prohibited acts; definitions.

(a) (1) Financial institutions and other Money Service Businesses are required by state law to comply with the filing, reporting and recordkeeping requirements provided for in federal law. The department may promulgate regulations that specify additional requirements for currency transaction reports, recordkeeping, and suspicious activity reports.

(2) Pursuant to federal law, a financial institution must keep a record of any currency transaction deemed suspicious for any reason, including transactions where money laundering is suspected, and file a report of such transaction with the appropriate federal authority. All such suspicious activity reports shall be simultaneously filed with the department, unless by regulation the department deems a federal filing to be adequate.

(3) The provisions of paragraph (1) of this subsection shall not apply to transfers between banks, credit unions, or savings and loan associations chartered under the laws of any state or the United States which do not involve the payment or receipt of currency and which are accomplished through a wire or electronic transfer system operated by the Federal Reserve System, the Federal Home Loan Bank System, or other governmental agency or instrumentality; provided, however, with regard to each such transfer the bank, credit union, or savings and loan association shall maintain a record of the name, address, and tax identification number of its customer, the name and location of the corresponding bank, credit union, or savings and loan association, and the name of the customer of the corresponding bank, credit union, or savings and loan association.

(b) The commissioner shall prescribe such regulations as he may deem appropriate to carry out the purposes of this article. Such regulations shall to the extent feasible be consistent with federal regulations and may provide for exemption of such transactions as the commissioner determines are clearly of a legitimate nature for which mandatory reporting would serve no useful purpose. The regulations shall provide for adequate safeguards against unauthorized currency transactions or transactions otherwise inconsistent with this article.

(c) The commissioner in his discretion may exercise the authority granted in Code Section 7-1-64 to assure that financial institutions subject to this article are in compliance herewith.

(d) No person shall for the purpose of evading the reporting requirements of this Code section:

(1) Cause or attempt to cause a financial institution to fail to file a report required pursuant to this Code section;

(2) Cause or attempt to cause a financial institution to file a report required pursuant to this Code section that contains a material omission or misstatement of fact; or

(3) Structure or assist in structuring or attempt to structure or assist in structuring any currency transaction with one or more financial institutions.

(e) For purposes of this Code section, the term:

(1) "Material omission or misstatement" shall include the furnishing of a false or erroneous name, address, taxpayer identification number, and business, profession, or occupation for the person performing the currency transaction or the beneficiary of such transaction or displaying or otherwise producing physical proof of identity on such persons which is forged, falsified, or otherwise altered; and

(2) "Structuring" of a currency transaction means the division of a transaction which would otherwise be reportable under this Code section into two or more transactions which if considered separately would not be reportable.

7-1-913. Access to reports.

The Georgia Bureau of Investigation and the Department of Revenue shall have access to and shall be authorized to inspect and copy any reports filed with the department pursuant to this article. In addition, unless prohibited by federal law or by any agreements with federal authorities, the Georgia Bureau of Investigation and

the Department of Revenue shall have access to and shall be authorized to inspect and copy any currency transaction report information received by the department from federal authorities.

7-1-914. Civil penalties; action for recovery; penalty.

(a) For each willful violation of this article, the commissioner may assess upon any financial institution and upon any director, officer, or employee thereof who willfully participates in the violation a civil penalty not exceeding \$1,000.00.

(b) In the event of the failure of any person to pay any penalty assessed under this Code section, a civil action for recovery thereof may, in the discretion of the commissioner, be brought in the name of the State of Georgia.

(c) Whoever conducts or attempts to conduct a transaction described in subsection (c) of Code Section 7-1-915 is liable to the State of Georgia for a civil penalty of not more than the amount of the funds involved in the transaction or \$10,000.00, whichever is greater.

7-1-915. Criminal penalties; penalties imposed by other Code sections not superseded.

(a) Except as provided in subsection (b) of this Code section, whoever willfully violates any provision of this article shall be guilty of a misdemeanor.

(b) Whoever willfully violates any provision of this article where the violation is:

(1) Committed in furtherance of the commission of any other violation of Georgia law;

or

(2) Committed as part of a pattern of illegal activity involving transactions exceeding \$100,000.00 in any 12 month period shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than \$500,000.00 or by imprisonment for not more than five years, or both.

(c) Whoever, knowing that the moneys involved in a currency transaction represent the proceeds of some form of unlawful activity, conducts or attempts to conduct such a transaction which in fact involves the proceeds of specified unlawful activity:

(1) With the intent to promote the carrying on of specified unlawful activity; or

(2) Knowing that the transaction is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or to avoid a transaction reporting requirement under this article shall be sentenced to a fine of not more than \$500,000.00 or twice the amount involved in the transaction, whichever is greater, or imprisonment for not more than 20 years, or both.

(d) Nothing in subsection (c) of this Code section nor in subsection (c) of Code Section 7-1-914 shall supersede any provision of law imposing criminal or civil penalties or affording civil remedies in addition to those provided for in this Code section or in Code Section 7-1-914.

7-1-916. Forfeiture of property involved in illegal transactions.

All property of every kind used or intended for use in the course of, derived from, or realized through a transaction which in fact involves the proceeds of unlawful activity specified in Chapter 14 of Title 16 or

otherwise subject to the provisions of this article shall be subject to forfeiture to the state. Forfeiture shall be had by the same procedure as is set forth in Code Section 16-14-7.

MONEY TRANSMISSION

CHAPTER 80-3-1

MONEY TRANSMISSION AND RELATED FINANCIAL SERVICES

80-3-1-.01	Check Sellers and Money Transmitters: Exemptions and Requirements.	80-3-1-.05	Repealed. Reserved.
80-3-1-.02	Check Cashers.	80-3-1-.06	Reports of Apparent Criminal Irregularity by Check Cashers, Check Sellers, Money Transmitters, and Agents.
80-3-1-.03	Money Service Businesses: Compliance with Federal Requirements.	80-3-1-.07	Administrative Fines and Penalties.
80-3-1-.04	Reports of Large Currency Transactions, Recordkeeping, and Suspicious Activity Reporting Requirements for Check Cashers, Check Sellers and Money Transmitters.	80-3-1-.08	State Requirement for Financial Institutions.

80-3-1-.01 Check Sellers and Money Transmitters: Exemptions and Requirements.

(1) For purposes of this Rule, the term "Licensee" shall mean a person duly licensed by the Department pursuant to O.C.G.A. Article 4 of Title 7, and shall include check sellers and money transmitters. Definitions of these activities are found at O.C.G.A. §7-1-680. The term "agent" shall mean the outlet through which the checks or money orders are sold under an agreement with the "licensee" and shall also include sales outlets that provide money transmission on behalf of a money transmitter on a contractual basis. For the purposes of this Rule or unless otherwise indicated, "sale of checks," "sale" or "issuance of checks" shall include money transmission. A license for sale of checks shall also permit the licensee to conduct money transmission, but the applicant must clearly indicate that it intends to transmit money. A separate license will be issued for persons who intend to conduct only money transmission.

(2) Exemption -

(a) The following financial institutions shall be exempt from the licensing requirements of the Georgia Sale of Checks Act when the sale of checks or transmission of money takes place in or through places of business located in this state:

1. A bank, or trust company, a credit union, a savings and loan association, or a savings bank, whether state or federally chartered, whose deposits are federally insured, and
2. The authorized agent of a licensee, or
3. The United States Postal Service.

(b) Financial institutions listed in subparagraph (a) of paragraph (2) of this Rule may designate agents to sell their checks and money orders at non-banking outlets, and the place of business of such agents will not be construed as a branch office. The agent must be bonded and the financial institution made solely liable for the payment of the checks and money orders upon proper presentation and demand. The responsibility of both the financial institution and its agent shall be carefully defined in a written agreement setting forth the duties of both parties and providing for remuneration of the agent. Agents shall be required to report on sales and transmit

funds therefrom not later than the end of the fifth business day following receipt of the funds. Arrangements for daily transmission of proceeds of sales is preferable, particularly if the volume of sales justifies more frequent transmission. The financial institution's blanket bond coverage shall extend to cover agency transactions and transmission of the funds to the financial institution.

(c) Licensees are required to submit agent information to the Department in electronic format. The Department will provide to licensees a recommended electronic file format. The initial agent list should include all agents of the licensee as of the date the licensee begins business. Future reports will be submitted on a semi-annual basis and will include only changes to that list: new agents of the licensee and deleted agents (whether revoked, suspended, or voluntarily closed). Failure to report agents and/or locations in the reporting period in which the agent began offering the licensee's services can result in fines, revocation, suspension, or other administrative action by the Department.

(d) For the purposes of this Rule, semi-annual reporting is defined to be the period January 1 through June 30 of each year, with the reporting due on or before the 1st business day of September, and the period of July 1 through December 31, with the reporting due on or before the 1st business day of March each year.

(3) Every licensee or agent or other representative of a licensee covered by the Georgia Sale of Checks Act shall display prominently in the premises where checks, money orders, or other instruments are issued and sold a certificate in prescribed form indicating that such sales or transmissions are licensed under the Act. In lieu of the foregoing, window decals and other advertising material relative to the sale of checks or money services available within this State shall bear the legend "LICENSED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE" in letters at least one-quarter inch high. The Department may waive the required legend as to specific material distributed in more than one licensing jurisdiction. Failure or refusal to so display such certificate where such sales are made will be cause for revocation or suspension of the designation of a representative or agent of a licensee.

(4) Every licensee giving notices of new locations over those previously reported as required in O.C.G.A. §7-1-686(b) shall do so on forms provided by the Department. Such notice shall include the name and business locations of any agent whose agency has been revoked or suspended by the licensee since the previous report. The reason for such revocation or suspension, and the amount of any outstanding claim by the licensee against the agent relating to the sale of checks shall be provided to the Department upon request.

(5) Audit; semi-annual reports.

(a) Notwithstanding any other rule, every licensee engaging in the sale of checks or money orders whose services may or may not include money transmission shall forward to the Department annually a copy of their certified audit reflecting their condition at the end of the normal accounting period. Each licensee engaging in the sale of checks or money orders whose services may or may not include money transmission is also required to furnish the Department financial information prepared on a semi-annual basis in a form prescribed by the Department. Licensees submitting financial information, in hard copy or electronically, are considered by the Department to be certifying to the material accuracy and validity of the financial information as submitted. All hard copies or electronic transmissions of certified audits should be forwarded to this Department within thirty (30) days after receipt of the report from outside accountants, and in no event will these certified audits be more than fifteen (15) months old.

(b) For the purpose of this Rule, semi-annual reporting is defined to be the period January 1 through June 30 of each year, with the reporting due on or before the 1st business day of September, and the period of July 1 through December 31, with the reporting due on or before the 1st business day of March each year.

(c) For holders of money transmission licenses only, a certified annual audit is not required. Holders of money transmission licenses only shall submit to the Department on a semi-annual basis the dollar amount of

outstanding orders to transmit not yet paid for. The Department will provide forms for reporting the dollar amount of outstanding orders to transmit but not paid for.

(6) Proceeds received from the sale of checks or money transmission net of fees charged and retained by the licensee's agent shall be remitted to the licensee by such means as the licensee shall require within five (5) business days from the date of sale or issuance unless more frequent remittance is required by the Department or the licensee.

(7) Receipt. Each customer placing a money transfer order shall be provided with a written receipt or other evidence of acceptance of the order showing the name of the licensee (or trade name of the licensee as registered with the Department), agent identifier information, the date the order was placed, the dollar amount of the transmission order, and the fee charged.

(8) Licensee liability. Check sellers must sign each check issued and are liable for payment to the same extent as a drawer of a negotiable instrument. Money transmitters, except in cases of gross negligence or intentional acts that result in harm to a person, are responsible to a customer for the amount of money transmitted, plus any fees charged to the customer for the service provided.

Authority O.C.G.A. §7-1-61; §7-1-681; §7-1-704; §7-1-688

80-3-1-.02 Check Cashers.

(1) Every applicant for a license or registration shall demonstrate to the Department that such applicant has sufficient financial resources in the form of working capital and tangible net worth to successfully engage in the business of cashing checks. Sufficiency of financial resources shall be determined through financial analysis by the Department of proforma and historical financial information on the applicant. Each licensee or registrant shall be required to complete and attest to official questionnaires and statements of assets and liabilities when requested for examination purposes. Licensees and registrants shall be prohibited from withholding, deleting, destroying, or altering information requested by an examiner of the Department or making false statements or material misrepresentations to the Department during the course of an examination or on any application or renewal form sent to the Department.

(2) As used in O.C.G.A. Article 4A of Title 7:

(a) "Employee" shall mean such persons (includes a natural person, as well as a partnership, association, corporation or other similar entity) as are regularly compensated by the licensee or registrant, its officers, directors, agents or assigns, to perform services for the licensee or registrant where such persons have access to the monetary resources of the licensee or registrant under the system of internal routine and controls employed in the offices of the licensee or registrant.

(3) Every licensee or registrant shall post in prominent view of each teller window or other customer service station a copy of its license or registration. The words "LICENSED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE" or "REGISTERED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE", as applicable, in letters at least one-quarter inch high shall be displayed by window decal or other signage at each public entrance to a licensed or registered check cashing business and all other advertising material relative to the cashing of checks distributed within this state.

(4) Exemptions.

(a) Exemptees: Persons who do not charge a fee to cash a check, draft, or money order. Fees may include cash, may be in the form of exchange of value in excess of regular retail value, in the form of mandatory purchase

of goods or services by patrons or in the form of the purchase of catalog items or coupons indicating the ability to receive goods, services, or catalog items.

(b) Registrants: Persons charging a fee of no more than two percent (2%) of the face amount of the check, draft, or money order or two dollars (\$2.00) per check, draft, or money order, whichever is greater, as consideration for the cashing of a check may be exempted from the requirement to obtain a license provided such check cashing service is not advertised, announced or otherwise promoted as a service. Such persons are designated as "Registrants." Notwithstanding such exemption from the requirement to obtain a license, such persons shall be subject to the requirements and restrictions on the cashing of checks set forth in O.C.G.A. §7-1-704 and §7-1-705, record keeping requirements in subsection 5(b) of this Rule, and other requirements as noted herein. Persons qualifying for registration under the provisions of this subsection shall apply for such registration on forms prescribed by the Department and will be required to pay a registration fee prescribed in Rule 80-5-1-.02.

(5) Minimum Books and Records.

(a) Books and records required herein shall be maintained by every holder of a license, or registration as indicated in this Rule. Information required in items 1 through 8 of subsection (5)(b) of this Rule, shall be maintained by all licensees, and registrants, cashing checks for an amount of more than one thousand dollars (\$1,000).

(b) A Daily Record of Checks Cashed shall be maintained as a record of all check cashing transactions occurring each day. For all checks in excess of one thousand dollar (\$1,000), such Daily Record shall include:

1. The date of the transaction;
2. Date of the check, draft, or money order (hereafter referred to as "check");
3. Check number;
4. Name and location or routing number of the payor bank;
5. Name of the Drawer of the check;
6. Name, address, and identifying number (social security, driver's license, passport, etc.) of the person negotiating the check;
7. Amount of the check; and
8. Amount of fee charged for cashing the check.

All other transactions not falling into the categories above may be listed by name of person negotiating the check, amount of check and amount of fee charged. Required information may be maintained through microfilm or other reviewable and reproducible facsimile of the check.

(c) A Daily Cash Reconciliation shall be maintained summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation shall separately reflect cash received from the sale of checks, redemption of returned items, bank cash withdrawals, cash disbursed in cashing of checks, and bank cash deposits.

(d) Records required under subsections (b) and (c) may be maintained in combined form, hand or machine posted, or automated.

(e) A General Ledger containing records of all assets, liabilities, capital, income and expenses shall be maintained. The General Ledger shall be posted from the Daily Record of Checks Cashed or other record of original entry, at least quarterly, and shall be maintained in such manner as to facilitate the preparation of an accurate trial balance of accounts in accordance with generally accepted accounting practices. A consolidated General Ledger reflecting activity at two or more locations under the same license or registration may be maintained provided books of original entry are separately maintained for each location.

(f) An original written authorization or other evidence of verification shall be maintained, attesting to the fact that said corporation has authorized its officers and employees or specific officers or employees to present checks, drawn by the corporation payable to cash or drawn by any party payable to the corporation, to a licensee or registrant for cashing. A check casher shall not cash a check payable to persons other than natural persons unless the payee has on file such a written authorization or verification indicating that the payee has authorized the presentation of such checks on behalf of the payee.

(g) For all entities cashing checks, each customer cashing a check shall be ~~provided a~~ offered the option of receiving a receipt showing the name of the licensee or registrant (or trade name of the licensee or registrant), the transaction date, amount of the check, and the fee charged.

(6) Personnel: Licensees and Registrants.

(a) Every licensee or registrant shall maintain personnel files for its employees.

(b) Each candidate for employment involved with the check cashing function must have a Georgia Crime Information Center (GCIC) criminal history background check performed prior to hiring. A copy of this GCIC criminal history background check shall be maintained in the employee's personnel file until one year after termination of employment by the licensee or registrant. Each person in a supervisory position shall complete a Financial and Biographical Information Report (Form MSB-3) as prescribed by the Department, an authorization for Criminal Background Check, and fingerprint record. Prior to promotion to a supervisory position involved in the check cashing function, or not later than thirty (30) days following promotion to a supervisory position the licensee or registrant shall cause an independent credit report and a criminal background check to be performed on the person promoted. The foregoing documents shall be retained in the personnel file until one year after termination of employment by the licensee or registrant. A "supervisory position" shall mean any position occupied by a person responsible for the day-to-day job performance of one or more other persons or responsible for the overall management of any check cashing outlet except on a temporary (less than one month) basis and irrespective of the number of subordinates employed.

(c) Persons found to have been convicted of an offense punishable as a felony involving moral turpitude in this state may not be employed by a licensee or registrant without compliance with O.C.G.A. §7-1-702.

(d) Persons found after investigation to have materially misstated information on (Form MSB-3) shall be terminated from employment; provided, however, the licensee or registrant may continue employment, subject to review by the Department, by placing in the personnel file a complete statement of extenuating circumstances considered valid reasons for continuing employment.

(7) All checks, drafts, and money orders drawn on a financial institution domiciled in the United States and cashed pursuant to a license or registration under Article 4A of Title 7, O.C.G.A., shall be sent for deposit to the licensee's or registrant's account at a depository financial institution domiciled within the United States or sent for collection not later than close of business on the next business day after the date on which the check was cashed.

(8) Each licensee, registrant, and exemptee shall maintain a principal location at which the books and records are maintained and which is accessible to the Department for examination during normal business hours. The Department may examine registrants and exemptees to verify qualification for exemption from licensing. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) or for material withholding of information or misrepresentation shall be revocation of the license, registration, or exempt status. The business of the licensee may be conducted through additional outlets, including those operated as mobile facilities, provided mobile facilities maintain a regular schedule of times and locations at which they provide check cashing services and such schedule is filed with the Department.

(9) Sale of Business; Closing of Check Cashing Business.

(a) A licensed check casher or registrant shall notify the Department in writing within fifteen (15) days of the permanent closing of its check cashing business and shall surrender its original license or registration to the Department at that time.

(b) A licensed or registered check casher shall notify the Department in writing thirty (30) days prior to the sale of the check cashing business when such sale results in a change in ownership. Licenses or registrations issued by the Department shall not be transferred or assigned, or subject to a change in ownership without prior written application to and approval by the Department. Any license or registration that is transferred, assigned or subject to a change in ownership without prior approval of the Department shall be regarded as invalid under law. Engaging in the business of cashing checks under a license or registration that has been transferred, assigned or otherwise acquired without prior approval by the Department shall subject a person to fines and administrative action.

Authority O.C.G.A. §7-1-61; §7-1-688; §7-1-704; §7-1-709

80-3-1-.03 Money Service Businesses: Compliance with Federal Requirements.

(1) For the purposes of this Rule, Money Service Businesses (MSBs) refer to a class of non-bank financial institutions defined in the federal Bank Secrecy Act, (for purposes of this Rule Chapter the “Act”), which Act requires such non-bank financial institutions to register with the Department of the Treasury and to comply with other recordkeeping and compliance laws.

(2) A licensee or registrant under O.C.G.A. Article 4 or 4A of Title 7 that is by definition an MSB under federal law, shall comply with the federal registration requirements for such businesses and shall provide the Department with evidence of such registration.

(3) Georgia requires that all licensees and registrants under O.C.G.A. Article 4 or 4a of Title 7 comply with the recordkeeping requirements, the necessity for a compliance program, currency transaction reporting, and suspicious activity reporting of the Act and its regulations, including those at 31 CFR Part 103 provided they are required to do so by the Act. MSBs filing a suspicious activity report (SAR) with a federal authority must send a copy of such report to the Department at the same time the SAR is filed. Other recordkeeping requirements required by state law are provided for in Rule 80-3-1-.02(5). Licensees and registrants may consult http://www.fincen.gov/financial_institutions/msb/ for questions about the federal requirements.

Authority O.C.G.A. §7-1-61; §7-1-688; §7-1-704.

80-3-1-.04 Reports of Large Currency Transactions, Recordkeeping, and Suspicious Activity Reporting Requirements for Check Cashers, Check Sellers and Money Transmitters.

(1) Persons engaged in the business of cashing checks for a fee, selling checks, and transmitting money and agents of such persons shall be subject to the filing requirements for large currency transactions as prescribed in O.C.G.A. Article 11 of Title 7, and as further directed herein.

(2) Reporting requirements to this Department contained in O.C.G.A. Article 11 of Title 7, shall be met by filing with the appropriate federal agency a copy of the form(s) filed in compliance with the Act within the time limits set forth therein. Such forms shall include the filing of currency transaction reports and suspicious activity reports as described in the Act and accompanying regulations.

(3) Recordkeeping. Georgia law regarding recordkeeping for check cashers, check sellers and money transmitters shall be satisfied by compliance with federal law. Such law will include the Act and regulations at 31 CFR Part 103. Check cashers not considered a money service business under the Act shall comply with the state recordkeeping requirements at Rule 80-3-1-.02(5).

(4) Records required to be maintained under Section (3) of this rule may be maintained in a photographic, electronic, or other similar form at a central location within or outside the State of Georgia provided specific records can be provided within two (2) days of the date of a written notice by the Commissioner to the licensee.

(5) Currency transaction reporting requirements for financial institutions are contained in Rule Chapter 80-9-1 of the Department's regulations.

Authority O.C.G.A. §7-1-61; §7-1-688; §7-1-704.

80-3-1-.05 Repealed. Reserved.

80-3-1-.06 Reports of Apparent Criminal Irregularity by Check Cashers, Check Sellers, Money Transmitters, and Agents.

(1) Sale of check and money transmitter licensees shall file with the Department the name, location, and federal tax identification number of any agent within this state who has failed to remit to the licensee the proceeds received from the sale of the licensee's checks or from licensee's money transmission activities within five (5) business days, or such lesser period of time as the licensee shall require, from the date of such sale or order to transmit and whose agency status has been terminated due to said failure with an outstanding liability due to the licensee. The report shall state the aggregate amount of unremitted check sales or money transmission proceeds due to the licensee and any provisions which have been made to recover same.

(2) Every licensed check casher and such other persons who charge a fee to cash a check shall report to the District Attorney or other appropriate law enforcement body having jurisdiction any transaction performed by them involving a check, draft or money order in the amount of one thousand dollars (\$1,000) or more which is found to have been altered, forged, stolen, obtained through fraudulent or illegal means, or negotiated without proper legal authority or which represents the proceeds of illegal activity. Such report shall include a copy of the check, draft or money order. The original of such check, draft or money order shall be retained by the check casher unless released to or with the consent of the District Attorney for the judicial circuit in which the check casher or his representative is located.

(3) Structuring to avoid reporting.

(a) Any person licensed to sell checks or cash checks in this state, agents of such licensees, other persons who cash checks for a fee, and persons operating a money transfer business and agents of such money transfer operators shall report to the Department any instance involving such check sales, check cashing, or money transfer operation where there is reasonable cause to believe that its customer has, for the purpose of evading the reporting requirements of the Act or O.C.G.A. Article 11 of Title 7:

1. Caused or attempted to cause a currency transaction report required under O.C.G.A. Article 11 of Title 7 or the Act not to be filed;

2. Caused or attempted to cause a currency transaction report required under O.C.G.A. Article 11 of Title 7 or the Act, to be filed containing a material omission or misstatement of fact;

3. Structured or assisted in structuring or attempted to structure or assist in structuring any currency transaction.

(b) For purposes of this Rule, “material omission” or “misstatement” and “structuring” shall have the meaning accorded such terms in O.C.G.A. §7-1-912.

(c) Agents of persons licensed to sell checks or cash checks in this state and agents of persons operating a money transfer business in this state shall not be required to report as provided in subsection (a) where the grantor of the agency has advised the agent in writing that the grantor operates a system of internal procedures designed to gather the pertinent data and file the reports required in subsection (a).

(4) Any licensee for the sale of checks, money transmitter, or check casher shall notify the Department within five (5) business days of any discovery of any criminal act or apparent criminal act by any officer, director, or employee of such licensee occurring in this state and relating to the business of the licensee. Such notification shall include a full description of the acts or apparent acts believed to be in violation of the criminal laws of this state or the United States, the names of all persons believed to be involved, a statement as to action taken by the licensee in response to the discovery or suspicions, and a copy of written notification to the licensee's employee fidelity insurance carrier.

(5) Licensees governed by these Rules shall be subject to amendments of the Act which may impose other reporting obligations for suspicious transactions.

Authority O.C.G.A. §7-1-61; §7-1-688; §7-1-704.

80-3-1-.07 Administrative Fines and Penalties.

(1) Check Cashers. As authorized under O.C.G.A. Article 4A of Chapter 1 of Title 7, including O.C.G.A. §7-1-707(e)(6), the Department establishes the following fines and penalties for violation of the laws and rules governing check cashers. Except as otherwise indicated, these fines and penalties apply to any person, partnership, association, or corporation engaged in the business of cashing checks, drafts, or money orders for a consideration that is required to be licensed or registered under O.C.G.A. Article 4A of Chapter 1 of Title 7 (“licensee” or “registrant”). The Department, at its sole discretion, may waive or modify a fine based upon the gravity of the violation, history of previous violations, and such other facts and circumstances as have contributed to the violation.

(a) Books and Records. If the Department in the course of an examination or investigation, finds that a licensee or registrant has failed to maintain their books and records or failed to certify to the books and records according to the requirements of O.C.G.A. §7-1-705(b) and Rules 80-3-1-.02(1) or 80-3-1-.02(5), such licensee or registrant shall be subject to a fine of one thousand dollars (\$1,000) for each type of record listed in Rules 80-3-1-.02(1) or 80-3-1-.02(5) which is not in compliance or which is absent or uncertified.

(b) Excessive Fees. If the Department, in the course of an examination or investigation, finds that a licensee or registrant has charged check cashing fees in excess of the amount set forth in O.C.G.A. §7-1-706, such licensee or registrant shall be subject to a fine of one thousand dollars (\$1,000) per occurrence and its license or registration will be subject to revocation or suspension.

(c) Posting of Charges. Any licensee or registrant who does not display, at all locations, a notice stating the charges/fees for cashing checks in accordance with O.C.G.A. §7-1-705(a) shall be subject to a fine of five hundred dollars (\$500).

(d) Operating Without Proper License or Registration. Any person who acts as a check casher prior to receiving a current license or registration required under O.C.G.A. Article 4A of Chapter 1 of Title 7, or who acquires a check cashing business and operates without their own license, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$1,000) per day and their check casher application will be subject to denial or their license or registration will be subject to revocation or suspension, as applicable.

(e) Felons. Any licensee or registrant that hires or retains an employee who is a felon as described in O.C.G.A. §7-1-702(b), when such employee has not complied with the remedies provided for in O.C.G.A. §7-1-702(b) for each conviction, may be fined five thousand dollars (\$5,000) for each such employee and their license or registration will be subject to revocation or suspension.

(f) Employee Background Checks. Any licensee or registrant that hires or retains an employee involved with the check cashing function for whom a Georgia Crime Information Center (GCIC) criminal background check has not been performed prior to employment, will be subject to a fine of one thousand dollars (\$1,000) per occurrence. Proof of the required GCIC criminal background check must be retained in the employee's personnel file until one year after termination of employment by the licensee. Notwithstanding compliance with this requirement to perform a GCIC criminal background check prior to employment, failure to maintain criminal background checks as required will result in a fine of one thousand dollars (\$1,000) for each employee personnel file that is missing this documentation.

(g) Examination Fees. Any licensee or registrant that does not submit payment to the Department, within sixty (60) days of the fee statement date, for examination fees charged in accordance with O.C.G.A. §7-1-704(b) and Rule 80-5-1-.03(1) shall be subject to a fine of five hundred dollars (\$500) and their license or registration will be subject to revocation or suspension.

(h) Other Business Activities. Any licensee or registrant found to have violated any law of this state by conducting any other business that is not lawful in conjunction with the check cashing business, shall be subject to a fine of five thousand dollars (\$5,000) and its license or registration will be subject to revocation or suspension.

(i) Advertising. Any person who has been designated as a registrant by the Department and who violates the law and/or Rules relative pertaining to advertising as set forth in O.C.G.A. § 7-1-700(4) and Rules 80-3-1-.02(2)(b) and 80-3-1-.02(4)(a) and (b), shall be subject to a fine of five hundred dollars (\$500) for each such violation and may be required to surrender its registration and apply for a license, if the Department determines that is the proper designation based upon the nature of the violation(s).

(j) Advertising – “No Identification Required.” A licensee or registrant that advertises that it will cash checks with no identification required will be subject to a fine of one thousand dollars (\$1,000).

(k) Check Cashing Identification Requirements. No licensee or registrant shall cash checks without identification of the bearer of such check. Failure to comply with the requirements of O.C.G.A. 7-1-705(f) shall subject the licensee or registrant to a fine of one thousand dollars (\$1,000) per occurrence.

(l) Failure to Submit to Exam. The penalty for refusal to permit an investigation or examination of books, accounts, and records, by the Department shall be revocation of license or registration and a five thousand dollars (\$5,000) fine. "Refusal" shall be determined according to Department Rules, examination policies and procedures, but shall require at least two (2) attempts to schedule an examination.

(m) Consumer Complaints. Any licensee or registrant who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee or registrant, shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence. Repeated failure to properly respond, as reasonably determined by the Department, may result in revocation of license or registration.

(n) Failure to Notify the Department of Change in Ownership. Any licensee, registrant or other person who fails to notify and obtain the Department's approval of a change in ownership shall be subject to a fine of five thousand dollars (\$5,000) and administrative action by the Department.

(o) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee or registrant has failed to comply with the requirements referred to in Rule 80-3-1-.03(3) entitled "Money Service Businesses Compliance with Federal Requirements," such licensee or registrant shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.

(p) Failure to Post Required License or Registration. Any licensee or registrant that fails to post a copy of its license or registration in prominent view of each teller window or other customer service station, and at each public entrance to a licensed or registered check cashing business as required shall be subject to a fine of five hundred dollars (\$500) for each instance of non-compliance.

(2) Check Sellers and Money Transmitters. As authorized under Article 4 of Chapter 1 of Title 7, O.C.G.A. §7-1-689(f), the Department establishes the following fines and penalties for violation of the laws and rules governing sale of check companies and money transmitters. Except as otherwise indicated, these fines and penalties apply to any person, partnership, association, or corporation engaged in the business of transmitting money or selling or issuing checks, money orders, or any other instrument, order, or device for the payment or transmission of money or monetary value that is required to be licensed under O.C.G.A. Title 7, Article 4 ("licensee"). The Department, at its discretion, may waive or modify a fine based upon the gravity of the violation, history of previous violations, and such other facts and circumstances as have contributed to the violation.

(a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain their books and records according to the requirements of O.C.G.A. §7-1-687.1, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each type of record listed in O.C.G.A. §7-1-687.1 which is not in compliance.

(b) Operating Without Proper License. Any person who acts as a check seller or money transmitter prior to receiving a current license required under O.C.G.A. Article 4 of Chapter 1 of Title 7, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$1,000) per day of such operation and their application will be subject to denial or their license or registration will be subject to revocation or suspension, as applicable.

(c) Felons. Any licensee that hires or retains an employee who is a felon as described in O.C.G.A. §7-1-682(c), when such employee has not complied with the remedies provided for in O.C.G.A. §7-1-682(c) for each

conviction before such employment, may be fined five thousand dollars (\$5,000) for each such employee and their license will be subject to revocation or suspension.

(d) Locations and Agents. Any licensee that does not give timely notice to the Department of new locations or agents beyond those previously reported as required in O.C.G.A. §7-1-686(b) and Rules 80-3-1-.01(2) and 80-3-1.01(4), shall be subject to a fine of five hundred dollars (\$500) for each location or agent not reported.

(e) GCIC Background Checks on Employees and Agents. Any licensee that does not obtain a Georgia Crime Information Center (GCIC) criminal background check on employees or agents **involved with the check selling function** prior to the initial date of hire shall be subject to a fine of one thousand dollars (\$1,000). Proof of the required GCIC criminal background check must be retained by the licensee until one year after termination of employment by the licensee. Failure to maintain criminal background checks as required will result in a fine of one thousand dollars (\$1,000) per employee personnel file absent such documentation.

(f) Agents. Any licensee that does not give notice of any agent whose agency certificate has been revoked or suspended by the licensee as required by Rule 80-3-1.01(4), shall be subject to a fine of five thousand dollars (\$5,000) for each agent suspension or revocation not reported in writing to the Department.

(g) Failure to Provide Receipt. A licensed money transmitter, or its authorized agent, that does not provide the customer with a written receipt or other evidence of acceptance as required in Rule 80-3-1-.01(8), shall be subject to a fine of one thousand dollars (\$1,000) per transaction where the receipt was not provided.

(h) Examination Fees. Any licensee that does not submit payment to the Department, within sixty (60) days of the fee statement date, for examination fees charged in accordance with O.C.G.A. §7-1-684.1 and Rule 80-5-1-.03(1) shall be subject to a fine of one thousand dollars (\$1,000) and their license will be subject to revocation or suspension.

(i) Other Business Activities. Any licensee found to have violated any law of this state by conducting any other business that is not lawful in conjunction with the sale of check or money transmission business, shall be subject to a fine of five thousand dollars (\$5,000) and their license will be subject to revocation or suspension.

(j) Failure to Report. Any licensee who fails to provide required reports as established by the Department from time to time, including the Semi-Annual Reports within the designated time periods established by the Department, shall be subject the licensee to a fine of five thousand dollars (\$5,000) for each such occurrence. Repeated failure to provide timely Reports as required may result in revocation of license, registration, or exempt status.

(k) Failure to Submit to Exam. The penalty for refusal to permit an investigation or examination of books, accounts, and records, to the Department shall be revocation of the license or registration and a one thousand dollars (\$1,000) fine. "Refusal" shall be determined according to the Department's Rules, examination policies and procedures, but shall require at least two (2) attempts to schedule an examination.

(l) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence. Repeated failure to properly respond, as reasonably determined by the Department, may result in revocation of license.

(m) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee or registrant has failed to comply with the requirements referred to in Rule 80-3-1-.03(3) entitled "Money Service Businesses Compliance with Federal Requirements," such licensee or registrant shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.

(3) All fines levied by the Department are due within thirty (30) days from date of assessment and must be paid prior to renewal of the annual license or registration, reapplication for a license or registration, or any other activity requiring Departmental approval.

(4) All fines collected by the, Department net of the cost of recovery, which cost may include any cost of hearing and discovery in preparation for hearing, shall be paid into the state treasury to the credit of the general fund or may be paid as provided in O.C.G.A. §7-1-704(d).

Authority O.C.G.A. § 7-1-61; § 7-1-688; § 7-1-707.

80-3-1-.08 State Requirements for Financial Institutions.

(1) A financial institution required to report any currency transaction in excess of ten thousand dollars (\$10,000) including a transaction in excess of one hundred thousand dollars (\$100,000) may satisfy state CTR filing and reporting requirements by filing a timely report (federal form 4789) with a federal authority as designated in the Act.

(2) Banks and credit unions are required to follow federal guidelines and requirements for detecting abuses or the structuring of transactions designed to avoid Act reporting.

Authority O.C.G.A. §7-1-61.

80-5-1-.02 License, Registration and Supervision Fees for Check Cashers and Sellers, Money Transmitters, Representative Offices and Mortgage Lenders and Brokers; Due Dates.

(1) Check sellers and money transmitters.

(a) The annual license fee is two thousand dollars (\$2,000).

(b) The annual renewal license fee is two thousand dollars (\$2,000) for check sellers and one thousand dollars (\$1,000) for money transmitters and shall be due and must be received by the Department on or before the first day of November of each year. Where the person or corporation engages in both the sale of checks and money transmission, the higher of the two fees shall be due and payable. Annual license renewal fees not received prior to November 1 will be assessed a late fee of three hundred dollars (\$300) and cannot be assured of issuance or renewal prior to January 1.

(c) An additional non-refundable application investigation fee of two hundred fifty dollars (\$250) will be assessed.

(d) All check seller and money transmitter licenses shall expire on December 31 of each year.

(2) Check Cashers.

(a) The annual license fee is five hundred dollars (\$500).

(b) The annual renewal license fee is five hundred dollars (\$500).

(c) An initial investigation and supervision fee shall be seven hundred fifty dollars (\$750) for the first year. It is not refundable, but if the license is granted it shall satisfy the annual fee for the first license period.

(d) Initial and renewal license fees shall also include an additional fifty dollars (\$50) for the second and each additional location, plus a fee in an amount as directed by the Department to cover the cost of the required number of fingerprints for each individual background check.

(e) Annual renewal license fees shall be due and must be received by the Department on or before the first day of August of each year. Annual renewal license fees not received prior to the first day of August of each year will be assessed a late fee of three hundred dollars (\$300) and cannot be assured of renewal prior to October 1. Applicants may not operate a check cashing business without a current license.

(f) Check cashers desiring exemption pursuant to Rule 80-3-1-.02(4)(b) and designated as Registrants shall file an initial application and pay a registration fee of two hundred dollars (\$200) and an annual renewal application and fee of one hundred dollars (\$100) due and must be received by the Department on or before the first day of August of each year. Annual renewal fees not received prior to the first day of August of each year will be assessed a late fee of one hundred dollars (\$100) and cannot be assured of renewal prior to October 1.

(g) An initial investigation and supervision fee shall be three hundred dollars (\$300) for the first year. It is not refundable, but if the license is granted it shall satisfy the annual fee for the first registration period.

(h) All check cashers licenses and registrants shall expire on September 30 of each year.

(3) Registrants of representative offices, trust production offices, business production offices, and loan production offices shall file a registration statement, as prescribed by the Department, and shall pay a registration fee of one hundred fifty dollars (\$150) on or before the first day of January of each year. Such fee is intended to cover the costs of responding to questions or complaints from consumers with regard to these entities doing business in Georgia and is in lieu of registration under O.C.G.A. § 16-14-15, as provided in O.C.G.A. § 7-1-11. Registrants of international bank representative offices shall pay a registration fee of one thousand dollars (\$1,000). Each bank holding company supervised by or registered with the Department shall pay on or before January 31 of each year an annual registration fee of one thousand dollars (\$1,000). Each Georgia bank holding company or holding company that owns a Georgia bank must pay five hundred dollars (\$500) for each additional Georgia subsidiary corporation in those categories, provided, however, any registrant required to register and pay a fee by another paragraph of this chapter shall only be required to pay one fee which shall be the higher fee.

(4) Mortgage licensees and registrants.

(a) Lenders. The initial and renewal application and license fee for mortgage lenders shall be one thousand dollars (\$1,000). The initial one thousand dollars (\$1,000) fee covers the main office. Any branch offices included in the initial application shall be assessed a fee of three hundred fifty dollars (\$350) each. A fee of three hundred fifty dollars (\$350) will be assessed for each additional office not initially registered, if such office is located in Georgia, and if mortgage lending activity is conducted at the office. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees plus a twenty dollar (\$20) fee for each approved branch office located in Georgia, must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and license fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be ~~considered to be~~ expired. Applicants may not conduct a mortgage business without a current license or registration.

(b) Brokers. The initial and renewal application and license fee for mortgage brokers shall be five hundred dollars (\$500). The initial five hundred dollar (\$500) fee covers the main office. Any branch offices located in Georgia shall be assessed a fee of three hundred fifty (\$350) each. Brokers include loan processors. Processors are defined in Rule 80-11-4-.07. Such a processor may have a separate main office and other branch offices

where mortgage loan processing is done. The offices will be treated the same as brokers' offices. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and license fee, plus a twenty dollar (\$20) fee for each approved branch office located in Georgia, that is not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will ~~be considered to be expired~~. Applicants may not conduct a mortgage business without a current license or registration.

(c) Mortgage Loan Originators. The initial and renewal application and license fee for mortgage loan originators shall be one hundred dollars (\$100), ~~due prior to December 1 of each year~~. Subsequent renewal application fees must be received by the Department on or before December 1 of each year or the applicant will be assessed a late fee of one hundred dollars (\$100). A renewal application is not deemed received until all required information, including a renewal fee in the appropriate amount and documentation showing that the requisite continuing education hours have been obtained, has been provided by the licensee. A renewal application, containing all of the required information along with the correct fees and proof of required continuing education that is not received by the Department on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will ~~be considered to be expired~~. Effective August 1, 2010, applicants may not conduct mortgage loan origination activity without a current license.

(d) Lender Registrants. The initial and renewal application and registration fee for mortgage lenders required to register but not be licensed with the Department shall be one thousand dollars (\$1,000), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and registration fees must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will ~~be considered to be expired~~. Applicants may not conduct a mortgage business without a current license or registration.

(e) Broker Registrants. The initial and renewal application and registration fee for mortgage brokers required to register but not be licensed with the Department shall be five hundred dollars (\$500), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and registration fees must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will ~~be considered to be expired~~. Applicants may not conduct a mortgage business without a current license or registration.

(f) All license, investigation, registration, and supervision fees, late fees and assessed civil penalties must be paid prior to renewal of the annual license or registration, reinstatement of a license or registration, reapplication for a license or registration or any other approval from the Department.

(g) All late fees collected by the Department, net of the cost of recovery, which cost shall include any cost of hearing and discovery in preparation for hearing, shall be paid into the state treasury to the credit of the general fund or may be paid as provided in O.C.G.A. § 7-1-1018(e).

(h) Applicants for approval to acquire directly or indirectly ten percent (10%) or more of the voting shares of a corporation or ten percent (10%) or more of the ownership of any other entity licensed to conduct business as a mortgage lender and/or a mortgage broker under O.C.G.A. Article 13 (otherwise called change of control) shall pay a nonrefundable investigation, application and processing fee of five hundred dollars (\$500).

(i) Application for an additional office of a licensee shall be accompanied by a nonrefundable fee of three hundred fifty dollar (\$350), as provided in O.C.G.A. §7-1-1006.

(j) The fee for initial application for approval by the Department for a school or education provider shall be five hundred dollars (\$500). An application for approval will be on a form provided by the Department at its website. The fee is nonrefundable. The fee for annual renewal of such approval is two hundred fifty dollars (\$250).

(5) The Department may discount or surcharge all supervision or license fees herein provided to assure funding of annual appropriations by the General Assembly.

Authority Ga. L. 1974, pp. 705, 732, 733, 921; Ga. L. 1976, Act 762, p. 168; 1990, p. 739; 1993, p. 543; O.C.G.A. § 7-1-41; § 7-1-61; § 7-1-685; O.C.G.A. § 7-1-701; O.C.G.A. § 7-1-703; O.C.G.A. § 7-1-716; O.C.G.A. § 7-1-721; § 7-1-1001.1; and § 7-1-1005.

OPERATING INSTRUCTIONS FOR CHECK CASHING LICENSEES & REGISTRANTS

Your License or Registration Certificate is effective through September 30 of every year. It will expire on that date unless renewed prior thereto. Please note that the following instructions are not an exhaustive list of requirements under Georgia Laws and Department Regulations. You are encouraged to become familiar with all laws, regulations and policies governing your business.

Examiners from the Department may visit your operation on an announced or unannounced basis. They will be reviewing your financial records and operations as a basis for determining continued eligibility for license or registration. Your cooperation is appreciated, so that we may fulfill the Department's statutory responsibility with as little disruption to your business routine as possible.

Licensed Check Cashers

1. The license (or a copy) should be in clear view of your customer service area at each location. Each public entrance to a licensed check cashing business should display a window decal or other signage stating "LICENSED/REGISTERED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE" in letters at least one-quarter inch high. This also applies to any advertising material relative to the cashing of checks distributed in Georgia.
2. A schedule of fees charged for the cashing of checks must be posted in clear view of each customer service area.
3. O.C.G.A Section 7-1-702(d) and Department Rule 80-3-1-.02(6) outline requirements for personnel records and employment practices that licensees must follow in regards to the personnel they employ in their check cashing business. Packages of information for employees and those employed in a supervisory position can be found on the Department's website at: <http://dbf.georgia.gov> from Forms and Applications, Other (Money Service Businesses). Felons are not allowed to work in the industry, and background checks must be performed **PRIOR TO** hiring.
4. Minimum Books and Records as prescribed by Code Section 7-1-705 and Department Rule 80-3-1-.02(5) must be maintained.
5. In accordance with Department Rule 80-3-1-.02(5)(g) each customer must be provided with a receipt showing the name of the licensee, the transaction date, amount of the check and the fee charged.
6. Checks cashed must be deposited for collection not later than the close of business of the next business day after the day the check is cashed in accordance with Department Rule 80-3-1-.02(7).
7. Endorsements of checks cashed must bear the trade name under which the business operates.
8. Payment for checks negotiated by the check casher must be made immediately. Payment may not be deferred for purposes of collecting the check from the payor financial institution.
9. "Corporate" check cashing (cashing of a check for someone other than a natural person) may only be performed if the check casher has on file written authorization from such entity that the person presenting the check is authorized to do so or other verification of such authority. Such presenter must endorse the check.

10. No licensed check casher may cash checks without proper identification of the person presenting the check. However, checks may be cashed simultaneously with the verification of identity and the creation of proper means of identification.
11. Within five business days after being advised by the payor financial institution that a check in the amount of \$1,000 or more has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or represents the proceeds of illegal activity, the check casher shall notify the Department and the District Attorney for the county in which the check was cashed. **The check may not be released by the check casher without the consent of such District Attorney.**
12. Fees charged for cashing any check **by licensed check cashers** may not exceed the higher of \$5.00 or:
 - Three percent (3%) of the face amount of public assistance checks issued by a state agency or the Social Security Administration;
 - Ten percent (10%) of the face amount of personal checks drawn by individuals against their personal account or money orders;
 - Five percent (5%) of the face amount of all other checks.

Premiums or surcharges added to the price of goods or services in excess of the regular retail cash price for such goods or services or “odd change” dropped in cashing checks shall be considered as part of the fee charged for purposes of the foregoing.

13. Transactions involving the receipt or payment of cash in excess of \$3,000 or aggregating more than \$10,000 require special reports or record keeping in compliance with Department Rule 80-3-1-.04 and the federal requirements under the Bank Secrecy Act. Please refer to those regulations for applicable provisions.

Registered Check Cashers

1. A copy of the registration certificate should be displayed and maintained at each registered location for inspection upon request.
2. A schedule of fees charged for the cashing of checks must be posted in clear view of each customer service area. Registrants may not advertise their services. The term “advertising” includes traditional forms of advertising such as through newspapers, yellow pages, promotional materials, brochures, etc., but also **includes any type of signage on your premises that promotes your check cashing services.**
3. Registrants as defined are subject to most provisions of the law that apply to full service licensees. Review the code sections and regulations above for references within where REGISTRANT or REGISTRATION has been added.
4. Minimum Books and Records as prescribed by Department Rule 80-3-1-.02(5)(b) must be maintained.
5. In accordance with Department Rule 80-3-1-.02(5)(g) each customer must be provided with a receipt showing the name of the licensee, the transaction date, amount of the check and the fee charged.
6. Checks cashed must be deposited for collection not later than the close of business of the next business day after the day the check is cashed in accordance with Department Rule 80-3-1-.02(7).
7. Endorsements of checks cashed must bear the trade name under which the business operates.

8. Payment for checks negotiated by the check casher must be made immediately. Payment may not be deferred for purposes of collecting the check from the payor financial institution.
9. "Corporate" check cashing (cashing of a check for someone other than a natural person) may only be performed if the check casher has on file written authorization from such entity that the person presenting the check is authorized to do so or other verification of such authority. Such presenter must endorse the check.
10. No registered check casher may cash checks without proper identification of the person presenting the check. However, checks may be cashed simultaneously with the verification of identity and the creation of proper means of identification.
11. Within five business days after being advised by the payor financial institution that a check in the amount of \$1,000 or more has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or represents the proceeds of illegal activity, the check casher shall notify the Department and the District Attorney for the county in which the check was cashed. The check may not be released by the check casher without the consent of such District Attorney.
12. Registrants may not charge more than 2% of the amount of the check or \$2.00, whichever is greater, for cashing a check and may NOT advertise the check cashing service. Premiums or surcharges added to the price of goods or services in excess of the regular retail cash price for such goods or services or "odd change" dropped in cashing checks shall be considered as part of the fee charged for purposes of the foregoing.
13. Transactions involving the receipt or payment of cash in excess of \$3,000 or aggregating more than \$10,000 require special reports or record keeping in compliance with Department Rule 80-3-1-.04 and the federal requirements under the Bank Secrecy Act. Please refer to those regulations for applicable provisions.
14. O.C.G.A Section 7-1-702(d) outlines requirements for personnel records and employment practices that registered check cashers must follow in regards to the personnel they employ in their check cashing business. Packages of information for employees can be found on the Department's website at: <http://dbf.georgia.gov> from Forms and Applications, Other (Money Service Businesses). Felons are not allowed to work in the industry, and background checks must be performed **PRIOR TO** hiring.

POLICY STATEMENT FOR MONEY TRANSMITTERS /WIRE TRANSFER OPERATORS

Background and Licensing Requirements

The implementation of licensing requirements for money transmitters in July 2003 gives the Department the authority to regulate companies that are receiving money for transmission, particularly transmission abroad, and to establish a minimum level of financial responsibility for all entities engaging in the business of receiving money for transmission without regard to the method of transmission.

In order to engage in money transmission in Georgia, the law requires that a person must first obtain a license under the Sale of Check Act (Act). Entities that serve as authorized agents for money transmitters are allowed to engage in money transmission without obtaining a separate money transmission license *as long as they do not engage in money transmission outside of the scope of their contract with the principal transmitter*. Therefore, any authorized agent which starts to offer money transmission on its own behalf will be required to obtain its own license.

"Money transmission." Money transmission as used in the Sale of Checks Act means engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means including, but not limited to, an order, wire, facsimile, or electronic transfer.

For the purposes of determining whether or not someone is **"engaged in the business of money transmission"** under Georgia law, a person is considered to be engaged in the business of money transmission in this state if that person makes available, from a location inside or outside of this state, an Internet website Georgia citizens may access in order to enter into those transactions by electronic means.

Internet payment services that hold customer's funds or monetary value for their own account rather than serve simply as clearing agents will normally fall within the definition of money transmission. By contrast, entities that simply transfer money between parties as clearing agents should fall outside the scope of a safety and soundness statute. Similarly, the definition excludes entities that solely provide delivery services (e.g., courier or package delivery services) and entities that act as mere conduits for the transmission of data such as Internet service providers.

"Monetary value." The definition of "money" has been expanded to reflect the fact that certain payment service providers employ a form of value that is not directly redeemable in money, but nevertheless (1) serves as a medium of exchange and (2) places the customer at risk of the provider's insolvency while the medium is outstanding. The same safety and soundness issues pertinent to redeemable forms of value apply to these irredeemable forms of value.

License Required

The licensing requirements refer to money transmission activities that take place in Georgia, whether transmitted within the U.S. or abroad. Federal law governing MSBs sets a minimum transactional activity threshold for daily business in order for a company to fall within the definition of MSB, subjecting them to requirements under Federal law. *Money transmitters, however, are not afforded such thresholds and are considered to be MSBs under Federal law if they engage as a business in the transfer of funds*. In other words, if a person is receiving money for transmission on behalf of another person or persons, they will need to be licensed. If a person were sending money for their own behalf, they would not need to be licensed.

Bond Requirements

The law gives the Department discretion to require a bond for money transmitters. The bond requirement is a safety and soundness measure designed to protect the public, but also to deter companies that have questionable solvency or business practices from entering the market.

A corporate surety bond issued by a bonding company or insurance company authorized to do business in this state and approved by the Department must accompany an application for a money transmitter license. The bond for money transmitters shall be in the principal sum of \$50,000.00, and in an additional principal sum of \$5,000.00 for each location, other than the licensee's primary place of business, up to a maximum aggregate of \$250,000.00. The Department may require additional coverage for the adequate protection of customers if the outstanding orders to transmit not yet paid for by the licensee exceed \$250,000.00. If required by the Department, the additional coverage shall be limited to \$1,250,000.00 or the amount of the average orders outstanding in the State of Georgia for the preceding year, whichever is less. Maximum bond required would therefore be \$1,500,000.

The term location refers to physical locations within Georgia. For licensees that provide money services via the Internet (as opposed to through physical locations), the Department will assess the required amount of the security bond based on other criteria such as the volume of business with residents of Georgia. Semi-annual reports of outstanding orders to transmit but not yet paid will be required, as they currently are for check sellers, to ensure that surety bond coverage is adequate.

Federal Requirements

The Bank Secrecy Act (BSA) requires certain money services businesses (MSBs) to register with the Financial Crimes Enforcement Network (FinCEN), of the U.S. Department of the Treasury. **With few exceptions, each MSB must register with the Department of the Treasury.** A person that is an MSB solely because that person serves as an agent of another MSB is not required to register. Registration of an MSB is the responsibility of the owner or controlling person of the MSB. Registration with FinCEN must be renewed every two years. Civil and criminal penalties may be imposed for willful violation of the registration requirement. For further information, please visit the FinCEN website http://www.fincen.gov/financial_institutions/msb/ or call 1-800-800-2877.

To assist you in complying with Federal laws and regulations governing your business, you should visit http://www.fincen.gov/financial_institutions/msb/, which was created by FinCEN to address the needs of MSBs. Using this website will help you learn more about MSBs and the BSA requirements that apply. The website provides free materials to help MSBs understand and comply with applicable federal laws and regulations.

The Department's filing requirements in regards to currency transaction reports (CTR) and/or suspicious activity reports (SARs) shall be deemed to be satisfied as long as the proper filing with the appropriate federal regulator has been made. In other words, sellers and issuers of checks and money orders and money transmitters do not have to file a copy of CTRs and/or SARs with the Department **as long as** the proper filing in compliance with the BSA has been made with the appropriate federal regulatory authority.

MONEY SERVICES BUSINESSES: POLICY STATEMENT REGARDING SCOPE OF PERSONS COVERED BY “AGENTS” AT RULE 80-3-1-.07(2)(e)

Purpose:

Based upon questions recently received in response to the Department of Banking and Finance (Department) Final Regulations adopted August 14, 2007, this Policy Statement provides a Department definition for the term “agents” for purposes of Rule 80-3-1-.07(2)(e).

Background:

O.C.G.A. Section 7-1-682(e) recently enacted by the Georgia General Assembly in pertinent part provides as follows:

“(e) Every applicant and licensee shall be authorized and required to obtain and maintain the results of background checks on employees and agents working in or for the applicant or licensee...”

The Department of Banking and Finance Final Regulations adopted on August 14, 2007, attempted to clarify the scope of persons covered by the requirement and the resulting fine for failure to obtain such background checks. Based upon numerous requests for further clarity, the Department has adopted the following definition of “agents” for purposes of Rule 80-3-1-.07(2)(e). The Department has provided such definition to its Money Services Businesses Examiners and has posted this Policy Statement to the Department’s website information.

Definition:

For purposes of Rule 80-3-1-.07(2)(e) only, the Department shall define “agents” as those individuals with a ten percent (10%) or more ownership interest in the outlet through which the checks or money orders are sold under an agreement with the Licensee and those sales outlets that provide money transmission on behalf of a money transmitter on a contractual basis.