Section by Section Breakdown of the bill (HB 891)

Section 1

Lines 43-95 – (7-1-37) – Generally, employees of the Department are prohibited from borrowing from entities over which they have regulatory authority. The bill does not eliminate that prohibition but instead eliminates the requirement that permissible borrowings be reported as it does not appear to serve any purpose. In addition, although generally prohibited from borrowing from regulated entities, the Code currently permits employees to have a credit card with a limit of $10,000. The bill proposes to increase the limit to $25,000 but continue to require reporting of the credit card if it is issued by a regulated entity.

Sections 2-4, 15, 16, and 18-20

Lines 101-149, 281–434, 447-551 –­­ (7-1-230, 7-1-231, 7-1-232, 7-1-605, 7-1-606, 7-1-622, 7-1-623, 7-1-625) – As part of its review of changes in control and acquisitions of banks and bank holding companies, the Department has identified a number of revisions to these provisions. The changes are as follows: The proposed language provides that in the event no person or entity controls 25% or more of a bank or holding company, then the largest shareholder over 10% will be subject to change in control processes. In addition, the phrase “concert with one or more persons” is defined consistent with historical interpretations of the Department. Also, the bill proposes to eliminate language providing for the automatic approval of certain applications if the Department does not act within a certain period of time. In addition, the bill eliminates consideration of convenience and needs in the event of a change in control or acquisition as the underlying institution already exists in the community. The bill also provides that notice must be provided to the Department if an out of state holding company acquires a Georgia bank regulated by the Department but that the Department does not need notice if the out of state holding company is acquiring a bank not regulated by the Department. In addition, the bill provides that notice must be provided to the Department if a national bank holding company acquires a Georgia chartered bank. Finally, the bill eliminates language suggesting that the Department has regulatory authority over out of state bank holding companies.

Sections 5 and 6

Lines 151-165 – (7-1-233, 7-1-234) – This revision clarifies that change in control provisions apply to financial institutions other than banks; specifically, the provisions apply to trust companies.

Section 7

Lines 169-179– (7-1-236) – This revision clarifies that the specific definition of control only applies to this code section as it is different from the definition of control for the rest of the article.

Sections 8-10

Lines 181-211 - (7-1-530, 7-1-531, 7-1-535) – The proposed revision expands on current authorization for a corporation to be merged into a bank or trust company to also permit an LLC to be merged into a bank or trust company.

Sections 11-14

Lines 213-279 – (7-1-590, 7-1-591, 7-1-592, 7-1-593) – A representative office is a location operated by a bank that does not satisfy all of the requirements to be a branch. The Department has reviewed its representative office processes and has identified a number of revisions. These changes are as follows: Provide that the home state laws of a national bank or out of state bank apply to the activities at the location unless the activities conflict with state law. In addition, the proposed language expressly recognizes the permissibility of deposit production offices. Also, the revision codifies the federal law limitation providing that a loan production office can’t close loans at the location. In addition, it strikes language indicating that an agent of a bank or bank holding company can open a representative office. The bill also provides that notice must be provided prior to the closing of a representative office. Finally, the bill eliminates repetitive or inconsistent language to be clear that representative offices must be registered with the Department.

Sections 15-17

Lines 281-445 - (7-1-605, 7-1-606, 7-1-607) – The proposed revision strikes language related to certain transactions that occurred prior to 1976 as it is no longer necessary.

Sections 16 and 22

Lines 432, 573 - (7-1-606, 7-1-628.4) – The proposed revision corrects incorrect cross-references as a result of last year’s housekeeping bill.

Section 21

Lines 553-561 - (7-1-628) – The proposed revision eliminates redundant language.

Sections 23 and 26

Lines 576-585, 615-624 - (7-1-633, 7-1-655) – The proposed revision requires the president of a newly formed credit union to be named at the organizational meeting but eliminates the requirement that the president has to be appointed annually by the Board of Directors.

Sections 24 and 29

Lines 587-606, 692-726– (7-1-650, 7-1-670) – Georgia law currently requires the Department to approve credit unions offering third party payment services, such as checking accounts. The proposed revision eliminates the requirement for approval from the Department prior to offering these services. This change aligns with the treatment of banks.

Section 25

Lines 608-613– (7-1-651.1) – This amendment eliminates a reference indicating that credit union members can vote by proxy as the credit unions members are expressly prohibited from voting by proxy.

Section 27

Lines 626-655– (7-1-656) – Credit union boards are required to meet at least once during ten months of the calendar year. The amendment would permit credit unions to meet less frequently with the approval of the Department. This aligns with the treatment of banks.

Section 28

Lines 657-690 - (7-1-658) – In the 2020 housekeeping bill we made a number of changes to the credit union legal lending limit including the combining of secured and unsecured obligations for the purpose of determining whether all of the transactions need to be secured. This provision created some unintended consequences for the 4 state-chartered credit unions with assets of $15 million or less as they couldn’t make a car loan and an unsecured signature loan for a couple of hundred dollars. The amendment will permit these smaller asset credit unions to not secure the small signature loan if a car loan already exists so long as the total combined liability is $50,000 or less. This will provide these small credit unions with relief to continue their previous practices but will not meaningfully increase the safety and soundness risk to these institutions.

Sections 30-33

Lines 728-878 - (7-1-680, 7-1-687, 7-1-688, 7-1-689) – The Conference of State Bank Supervisors, of which the Department is a member, and money service business representatives recently developed a model law in order to harmonize definitions and requirements between various states. The model money transmitter law was put out in two phases and this bill seeks to incorporate a number of the revisions proposed in the first phase. The changes are as follows: The bill provides that a passive investor – an investor that does not exercise control and has less than a 25% ownership interest – does not have to be vetted and approved by the Department in most cases. In addition, the bill revises the definition of executive officer to make clear that only an individual with policy-making authority has to be vetted and approved by the Department. The bill also revives the definition of control to include any person that has the ability to appoint or elect a majority of the executive officers. The bill updates the definition of ultimate equitable owner to capture families that may split ownership interests to circumvent vetting. In addition, the bill eliminates the requirement that current licensees submit a change in control when acquiring another licensee as long as certain conditions are satisfied. The bill also expressly authorizes the Department to participate in multi-state licensing processes and authorizes the Department to utilize analytical systems to potentially streamline regulatory processes. The bill permits third parties to obtain international investigative background checks when an individual has resided outside of the United States. Finally, the bill permits the Department to disapprove of a new executive officer that did not have to be vetted by the Department through the change in control process.

Sections 31, 34, 36, 44

Lines 769-807, 880-901, 1236-1246 - (7-1-687, 7-1-705, 7-1-1007, 7-3-31) – The bill eliminates the requirement that certain required notices from licensed money service businesses, mortgage lenders and brokers, and installment lenders be sent to the Department via registered or certified mail. Instead of utilizing registered or certified mail, the Department envisions that these notices will be sent to it electronically.

Section 35

Lines 903-1100 – (7-1-1001) – The bill seeks to add an exemption to the mortgage licensing laws as it seeks to carve out entities that hold mortgage loans for a limited period of time for the sole purpose of securitizing the mortgage loans. A very common practice in the mortgage industry is for individual mortgages to be pooled and then securities sold that draw on the mortgage payments on the individual mortgages. Typically, the mortgages are held by a trust or other entity for a short period of time before they are pooled together and ultimately securitized. Given that the exemption only applies to entities that hold loans for seven days or less, there seems to be very little, if any, consumer exposure to the entities that are holding the loans and, thus, an exemption from licensure appears appropriate. In addition, the bill seeks to modernize a currently existing exemption. As a general rule, a licensee must retain mortgage loan originators as employees and not independent contractors. A limited exception to this rule exists if the licensee is a subsidiary of a bank holding company or financial holding company and satisfies certain requirements. This exemption has not been utilized in over a decade. The bill proposes to authorize sophisticated financial companies that have a mortgage broker license to utilize independent contractors so long as a number of safeguards are in place such as an increased bond, the independent contractor working exclusively for the licensee, the licensee having full and complete responsibility over the independent contractors actions, and the licensee or an affiliated entity along with the independent contractor to be licensed by the Insurance Commissioner or the Secretary of State, Securities Division.

Sections 37 and 38

Lines 1115-1160 – (7-3-3, 7-3-4) – Since the regulation of installment lending was transferred to the Department in 2020, the Department has identified a number of areas for potential revision, including the areas for which a license is required. The bill seeks to require that licensure be required for all activities that satisfy the definition of installment lending as the Code currently only requires that an entity that makes an installment loan be licensed but the definition of installment lending includes soliciting, offering, and advertising loans as well. The bill also seeks to expand the definition of installment lending to include the servicing of loans for others as there is the possibility of consumer harm in the servicing of loans which is heightened if the entity is not regulated or affiliated with a regulated entity. Finally, the bill seeks to expressly spell out certain exemptions from licensure: governmental entities that make loans of less than $3,000; retail installment sellers as defined in OCGA 10-1-2 and 10-1-31; and lines of credit in excess of $3,000 but where the line is drawn down to an amount of less than $3,000.

Section 39

Lines 1162-1169 - (7-3-11) – Prior to the transfer of the regulation of the installment lending industry to the Department, Georgia law provided that each licensee, which was each location of an entity, could make a loan of up to $3,000. When the regulation of the industry was transferred to the Department, the language was not revised so the ability to make a loan of up to $3,000 was limited to each licensee which, under the current law, included all of the locations operated by the entity. The proposed change of authorizing a loan of up to $3,000 will return the industry to the status quo prior to the regulatory transfer of the bill and ensure that more loans are subject to regulatory oversight by the Department.

Sections 40, 41, 42, 43, 45

Lines 1171-1234, 1248-1251 - (7-3-16, 7-3-17, 7-3-18, 7-3-21, 7-3-43) – Georgia law currently provides that licensees must remit a 3% “tax” on the interest collected by installment lenders. The implementation of this rule is overly complex and resulted in this being one of the most frequently cited violations while the industry was regulated by the Insurance Commissioner. The bill proposes to eliminate the tax on interest provision and replace it with a percentage fee based upon the gross loan amount at the time of funding. The Department believes that this simplification will reduce, if not eliminate, some of the historic issues with remitting funds to the state. The per loan fee percentage of 0.125% should be revenue neutral based on the traditional remittances to the Insurance Commissioner and the projected remittances based on quarterly loan filings remitted to the Department by licensees.

Section 46

Lines 1253-1261 - (7-3-45) -The bill provides that the ability of the Department to issue a cease and desist order to a natural person employed by an installment lender capture any reason that the Department may take an action against an applicant or a licensee as that would clarify the scope of the Department’s enforcement authority and make clear that the Department can take administrative action against an employee that commits prohibited acts.

Section 47

Lines 1263-1271 – (7-6A-2) – The change revises the reference to federal law to reference the correct citation.