

House Bill 1361

By: Representatives Smith of the 175th, Turnquest of the 73rd and Dukes of the 161st

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 7 of the Official Code of Georgia Annotated, relating to banking, so as to
2 enact the "Georgia Fair Lending Act"; to prohibit abusive home loan practices; to provide
3 for definitions; to provide for prohibited practices and limitations relating to high-cost home
4 loans; to create specific and numerous consumer protections for high-cost home loans; to
5 provide for penalties and enforcement; to provide for exceptions for unintentional violations;
6 to provide for related matters; to provide for severability; to provide for applicability and an
7 effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 7 of the Official Code of Georgia Annotated, relating to banking, is amended by adding
11 a new Chapter 6A to read as follows:

12 "CHAPTER 6A

13 7-6A-1.

14 This chapter shall be known and may be cited as the 'Georgia Fair Lending Act.'

15 7-6A-2.

16 As used in this chapter, the term:

17 (1) 'Acceleration' means a demand for immediate repayment of the entire balance of a
18 home loan.

19 (2) 'Affiliate' means any company that controls, is controlled by, or is under common
20 control with another company, as set forth in 12 U.S.C. Section 1841, et seq., as from
21 time to time amended.

22 (3) 'Annual percentage rate' means the annual percentage for the loan calculated
23 according to the provisions of 15 U.S.C. Section 1606 and the regulations promulgated

1 thereunder by the Board of Governors of the Federal Reserve System, as from time to
2 time amended.

3 (4) 'Bona fide discount points' means loan discount points knowingly paid by the
4 borrower for the express purpose of reducing, and which in fact do result in a bona fide
5 reduction of, the interest rate applicable to the home loan; provided, however, that the
6 undiscounted interest rate for the home loan does not exceed by more than one percentage
7 point the required net yield for a 90 day standard mandatory delivery commitment for a
8 reasonably comparable home loan from either the Federal National Mortgage Association
9 or the Federal Home Loan Mortgage Corporation, whichever is greater.

10 (5) 'Borrower' means any natural person obligated to repay the loan including a
11 coborrower, cosigner, or guarantor.

12 (6) 'Creditor' means a person who extends consumer credit that is subject to a finance
13 charge or is payable by written agreement in more than four installments. The meaning
14 of creditor shall include any person brokering a home loan, which shall include any
15 person who directly or indirectly solicits, processes, places, or negotiates home loans for
16 others or offers to solicit, process, place, or negotiate home loans for others or who closes
17 home loans which may be in the person's own name with funds provided by others and
18 which loans are thereafter assigned to the person providing the funding of such loans.
19 The meaning of creditor shall include any person who purchases, is assigned, or services
20 home loans.

21 (7) 'High-cost home loan' means a home loan in which the terms of the loan meet or
22 exceed one or more of the thresholds as defined in paragraph (12) of this Code section.

23 (8) 'Home loan' means a loan, including an open-end credit plan, other than a reverse
24 mortgage transaction or a loan primarily for business or commercial purposes, where the
25 principal amount does not exceed the conforming loan size limit for a single-family
26 dwelling as established from time to time by the Federal National Mortgage Association
27 and the loan is secured by:

28 (A) A mortgage, security deed, or deed to secure debt on real estate located in this state
29 upon which there is located or there is to be located a structure or structures designed
30 principally for occupancy of from one to four families and which is or will be occupied
31 by a borrower as the borrower's principal dwelling; or

32 (B) A security interest in a manufactured home which is or will be occupied in this
33 state by a borrower as the borrower's principal dwelling.

34 (9) 'Make' or 'makes' means to originate a loan or to engage in brokering of a home loan
35 including the soliciting, processing, placing, or negotiating of a home loan made or
36 offered by a person brokering a home loan.

1 (10) 'Manufactured home' means a structure, transportable in one or more sections,
2 which in the traveling mode is eight body feet or more in width or 40 body feet or more
3 in length or, when erected on site is 320 or more square feet and which is built on a
4 permanent chassis and designed to be used as a dwelling with a permanent foundation
5 and erected on land either owned or for which a security interest is granted by the
6 borrower when connected to the required utilities and includes the plumbing, heating,
7 air-conditioning, and electrical systems contained therein; except that such term shall
8 include any structure which meets all the requirements of this paragraph except the size
9 requirements and with respect to which the manufacturer voluntarily files a certification
10 required by the secretary of the United States Department of Housing and Urban
11 Development and complies with the standards established under the National
12 Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C.
13 Section 5401, et seq., as from time to time amended.

14 (11) 'Points and fees' means:

15 (A) All items listed in 12 C.F.R. 226.4(a) and 12 C.F.R. 226.4(b), as from time to time
16 amended, except interest or the time price differential. All items excluded under 12
17 C.F.R. 226.4(c)(7), as from time to time amended, may be excluded from points and
18 fees provided that the creditor does not receive direct or indirect compensation in
19 connection with the charge and the charge is not paid to an affiliate of the creditor;

20 (B) All compensation paid directly or indirectly to a mortgage broker from any source,
21 including a broker that originates a loan in its own name in a table funded transaction,
22 including but not limited to yield spread premiums, yield differentials, and service
23 release fees;

24 (C) The total amount of all premiums financed by the creditor, directly or indirectly for
25 any credit life, credit disability, credit unemployment, or credit property insurance or
26 any other life or health insurance or any payments financed directly or indirectly for
27 any debt cancellation or suspension agreement or contract, except that such insurance
28 premiums or debt cancellation or suspension fees calculated and paid on a monthly
29 basis shall not be considered financed by the creditor;

30 (D) The maximum prepayment fees and penalties that may be charged or collected
31 under the terms of the loan documents;

32 (E) All prepayment fees or penalties that are charged to the borrower if the loan
33 refinances a previous loan made or purchased by the same creditor or an affiliate of the
34 creditor; and

35 (F) For open-end loans, points and fees are calculated by adding the total fees charged
36 at closing plus the maximum additional fees which can be charged pursuant to the loan
37 documents during the term of the loan.

1 (12) 'Threshold' means:

2 (A) Without regard to whether the loan transaction is or may be a residential mortgage
3 as the term 'residential mortgage transaction' is defined in 12 C.F.R. 226.2(a)(24), as
4 from time to time amended, the annual percentage rate of the loan is such that it equals
5 or exceeds that set out in Section 152 of the Home Ownership and Equity Protection
6 Act of 1994, 15 U.S.C. Section 1602(aa), as from time to time amended, and the
7 regulations adopted pursuant thereto by the Federal Reserve Board, including Section
8 12 C.F.R. 226.32, as from time to time amended. For determining the applicable annual
9 percentage rate under this Code section for variable rate loans, the rate shall be
10 determined using the index rate at the time of loan closing and adding the maximum
11 fully indexed margin permitted at any time under the loan documents. For determining
12 the applicable annual percentage rate under this Code section for loans with a reduced
13 introductory rate that may later increase, the rate shall be determined based on the
14 maximum allowable rate after the period for the introductory rate has expired; or

15 (B) The total points and fees payable in connection with the loan, excluding not more
16 than two bona fide discount points, exceed: (i) 5 percent of the total loan amount if the
17 total loan amount is \$20,000.00 or more or (ii) the lesser of 8 percent of the total loan
18 amount or \$1,000.00 if the total loan amount is less than \$20,000.00.

19 (13) 'Total loan amount' means the principal of the loan minus those points and fees as
20 defined in paragraph (11) of this Code section that are included in the principal amount
21 of the loan. For open-end loans the total loan amount shall be calculated using the total
22 credit line available under the terms of the home loan.

23 7-6A-3.

24 Home loans shall be subject to the following limitations and prohibited practices:

25 (1) No creditor shall make a home loan that finances, directly or indirectly, any credit
26 life, credit disability, credit unemployment, or credit property insurance or any other life
27 or health insurance or any payments directly or indirectly for any debt cancellation or
28 suspension agreement or contract, except that insurance premiums or debt cancellation
29 or suspension fees calculated and paid on a monthly basis shall not be considered
30 financed by the creditor;

31 (2) No creditor may engage in the unfair act or practice of 'flipping' a home loan.
32 Flipping occurs when a creditor makes a home loan to a borrower that refinances an
33 existing home loan when the new loan does not provide reasonable, tangible net benefit
34 to the borrower considering all of the circumstances, including the terms of both the new
35 and refinanced loans, the cost of the new loan, and the borrower's circumstances. In
36 addition, the home loan refinancing transaction shall be presumed to be a flipping where

1 the new loan refinances an existing home loan that is a special mortgage originated,
 2 subsidized, or guaranteed by or through a state, tribal, or local government or a nonprofit
 3 organization, which either bears a below-market interest rate at the time the loan was
 4 originated or has nonstandard payment terms beneficial to the borrower, such as
 5 payments that vary with income, are limited to a percentage of income, or where no
 6 payments are required under specified conditions and where, as a result of the
 7 refinancing, the borrower will lose one or more of the benefits of the special mortgage;

8 (3) No creditor shall recommend or encourage default on an existing loan or other debt
 9 prior to and in connection with the closing or planned closing of a home loan that
 10 refinances all or any portion of such existing loan or debt;

11 (4) No creditor may charge a borrower a late payment charge unless the loan documents
 12 specifically authorize the charge, the charge is not imposed unless the payment is past
 13 due for ten days or more, and the charge does not exceed 5 percent of the amount of the
 14 late payment. A late payment charge may not be imposed more than once with respect
 15 to a single late payment and no late payment charge may be charged with respect to any
 16 subsequent payment that would have been timely but for the previous default or the
 17 imposition of the previous late payment charge; and

18 (5) No creditor may charge a fee for informing or transmitting to any person the balance
 19 due to pay off a home loan or to provide a release upon prepayment. When such
 20 information is provided by facsimile or if it is provided upon request within 60 days of
 21 the fulfillment of a previous request, a creditor may charge a processing fee up to \$5.00.
 22 Payoff balances shall be provided within a reasonable time but in any event no more than
 23 five business days after the request.

24 7-6A-4.

25 High-cost home loans shall be subject to the following limitations and prohibited practices:

26 (1) No prepayment fees or penalties shall be included in the loan documents for a
 27 high-cost home loan or charged the borrower after the last day of the twenty-fourth month
 28 following the loan closing or at any time which exceed in the aggregate:

29 (A) In the first 12 months after the loan closing, more than 2 percent of the loan
 30 amount prepaid; or

31 (B) In the second 12 months after the loan closing, more than 1 percent of the amount
 32 prepaid;

33 (2) A high-cost home loan shall not contain a scheduled payment that is more than twice
 34 as large as the average of earlier scheduled payments. This provision does not apply when
 35 the payment schedule is adjusted to the seasonal or irregular income of the borrower;

1 (3) A high-cost home loan shall not include payment terms under which the outstanding
2 principal balance will increase at any time over the course of the loan because the regular
3 periodic payments do not cover the full amount of interest due;

4 (4) A high-cost home loan shall not contain a provision that increases the interest rate
5 after default. This provision does not apply to interest rate changes in a variable rate loan
6 otherwise consistent with the provisions of the loan documents, provided the change in
7 the interest rate is not triggered by the event of default or the acceleration of the
8 indebtedness;

9 (5) A high-cost home loan shall not include terms under which more than two periodic
10 payments required under the loan are consolidated and paid in advance from the loan
11 proceeds provided to the borrower;

12 (6) Without regard to whether the borrower is acting individually or on behalf of others
13 similarly situated, a high-cost home loan shall not be subject to a mandatory arbitration
14 clause that limits in any way the right of the borrower to seek relief through the judicial
15 process for any and all claims and defenses the borrower may have against the creditor,
16 broker, or other party involved in the loan transaction. A high-cost home loan agreement
17 shall not contain a form mandatory arbitration clause that in any way limits the parties'
18 rights to a judicial forum or to judicial recourse. In a high-cost loan agreement, such
19 form mandatory arbitration clauses are unconscionable;

20 (7) A creditor shall not make a high-cost home loan without first receiving certification
21 from a counselor with a third-party nonprofit organization approved by the United States
22 Department of Housing and Urban Development or the Georgia Housing and Finance
23 Authority that the borrower has received counseling on the advisability of the loan
24 transaction;

25 (8) A creditor shall not make a high-cost home loan unless a reasonable creditor would
26 believe at the time the loan is consummated that the borrower residing in the home will
27 be able to make the scheduled payments associated with the loan based upon a
28 consideration of his or her current and expected income, current obligations, employment
29 status, and other financial resources, other than the borrower's equity in the collateral that
30 secures repayment of the loan. There is a rebuttable presumption that the borrower
31 residing in the home is able to make the scheduled payments to repay the obligation if,
32 at the time the loan is consummated, said borrower's total monthly debts, including
33 amounts under the loan, do not exceed 50 percent of said borrower's monthly gross
34 income as verified by tax returns, payroll receipts, and other third-party income
35 verification;

36 (9) A creditor shall not pay a contractor under a home improvement contract from the
37 proceeds of a high-cost home loan unless:

1 (A) The creditor is presented with a completion certificate signed and dated by the
2 borrower of the home loan and the contractor showing that the home improvements
3 have been completed; and

4 (B) The instrument is payable to the borrower or jointly to the borrower and the
5 contractor or, at the election of the borrower, through a third-party escrow agent in
6 accordance with terms established in a written agreement signed by the borrower, the
7 drafter of the instrument, and the contractor prior to the disbursement;

8 (10) A creditor shall not charge a borrower any fees or other charges to modify, renew,
9 extend, or amend a high-cost home loan or to defer any payment due under the terms of
10 a high-cost home loan;

11 (11) A creditor that makes a high-cost home loan shall not require a borrower to waive
12 his or her right to a judicial hearing or to any and all rights which the borrower may have
13 under the Fifth and Fourteenth Amendments to the United States Constitution or to notice
14 and judicial hearing prior to the exercise by the creditor of any right or remedy provided
15 to the creditor in the home loan agreement. Any creditor making a high-cost home loan
16 who has the legal right to foreclose must use the judicial foreclosure procedures set out
17 in Code Section 44-14-49 for judicial foreclosure in equity, Code Section 44-14-180 for
18 judicial foreclosure of a mortgage, or Code Section 44-14-210 for judicial foreclosure of
19 a deed to secure debt, whichever is appropriate. The borrower shall have the right to
20 assert in such proceeding the nonexistence of a default and any other claim or defense to
21 acceleration and foreclosure including any based on any violations of this chapter, though
22 no such claim or defense shall be deemed a compulsory counterclaim;

23 (12) If a creditor asserts that grounds for acceleration of a high-cost home loan exist and
24 requires the payment in full of all sums secured by the security instrument, the borrower
25 or anyone authorized to act on the borrower's behalf shall have the right at any time, up
26 to the time title is transferred by means of foreclosure by judicial proceeding and sale or
27 otherwise, to cure the default and reinstate the home loan by tendering the amount or
28 performance as specified in this paragraph. Cure of default as provided in this paragraph
29 shall reinstate the borrower to the same position as if the default had not occurred and
30 shall nullify as of the date of the cure any acceleration of any obligation under the
31 security instrument or note arising from the default;

32 (13)(A) Before any action filed to foreclose upon the home or other action is taken to
33 seize or transfer ownership of a home, a notice of the right to cure the default must be
34 delivered to the borrower informing the borrower of the following:

35 (i) The nature of the default claimed on the home loan and of the borrower's right
36 to cure the default by paying the sum of money required to cure the default. If the
37 amount necessary to cure the default will change during the 30 day period after the

1 effective date of the notice due to the application of a daily interest rate or the addition
2 of late fees as allowed by this chapter, the notice shall give sufficient information to
3 enable the borrower to calculate the amount at any point during the 30 day period;

4 (ii) The date by which the borrower shall cure the default to avoid acceleration and
5 initiation of foreclosure or other action to seize the home which date shall not be less
6 than 30 days after the date the notice is effective and the name and address and phone
7 number of a person to whom the payment or tender shall be made;

8 (iii) That, if the borrower does not cure the default by the date specified, the creditor
9 may take steps to terminate the borrower's ownership in the property by requiring
10 payment in full of the home loan and commencing a foreclosure proceeding or other
11 action to seize the home; and

12 (iv) The name and address of the creditor and the telephone number of a
13 representative of the creditor whom the borrower may contact if the borrower
14 disagrees with the creditor's assertion that a default has occurred or the correctness
15 of the creditor's calculation of the amount required to cure the default.

16 (B) To cure a default under this paragraph a borrower shall not be required to pay any
17 charge, fee, or penalty attributable to the exercise of the right to cure a default as
18 provided for in this Code section, other than the fees specifically allowed by this Code
19 section. The borrower shall not be liable for any attorney fees relating to the borrower's
20 default that are incurred by the creditor prior to or during the 30 day period set forth in
21 this paragraph, nor for any such fees in excess of \$100.00 that are incurred by the
22 creditor after the expiration of the 30 day period but prior to the time the creditor files
23 a foreclosure action or takes other action to seize or transfer ownership of the home.
24 After the creditor files a foreclosure action or takes other action to seize or transfer
25 ownership of the home, the borrower shall only be liable for attorney fees that are
26 reasonable and actually incurred by the creditor based on a reasonable hourly rate and
27 a reasonable number of hours.

28 (C) If a default is cured prior to the initiation of any action to foreclose or to seize or
29 transfer the residence, the creditor shall not institute the foreclosure proceeding or other
30 action for that default. If a default is cured after the initiation of any action to foreclose,
31 the creditor shall take such steps as are necessary to terminate the foreclosure
32 proceeding or other action;

33 (14) A high-cost home loan shall not contain nor shall a creditor enforce a provision that
34 permits a creditor, in its sole discretion, to accelerate the indebtedness. This paragraph
35 does not prohibit acceleration of the loan in good faith due to the borrower's failure to
36 abide by the material terms of the loan; and

1 (15) All high-cost home loan agreements shall contain the following notice: 'Notice:
2 This is a mortgage subject to special rules under the Georgia Fair Lending Act.
3 Purchasers or assignees of this mortgage may be liable for all claims and defenses by the
4 borrower with respect to the mortgage.'

5 7-6A-5.

6 (a) Notwithstanding any other provision of law, where a home loan was made, arranged,
7 or assigned by a person selling either a manufactured home or home improvements to the
8 dwelling of a borrower, the borrower may assert all affirmative claims and any defenses
9 that the borrower may have against the seller or home improvement contractor against the
10 creditor, any assignee, holder, or servicer in any capacity.

11 (b) Notwithstanding any provision of any other law, the remedies provided pursuant to this
12 chapter apply to the creditor, any director, officer, employee, or controlling stockholder of
13 or agent for a creditor who personally makes or participated in the making or approving of
14 a high-cost home loan and any other persons to whom this chapter applies and who violated
15 the requirements of this chapter. Any person who purchases or is otherwise assigned a
16 high-cost home loan shall be subject to all affirmative claims and any defenses with respect
17 to the loan that the borrower could assert against the original creditor or creditors of the
18 loan.

19 (c) Notwithstanding any provision of any other law, a borrower on any home loan, after
20 notice of acceleration or foreclosure of the loan or if in default more than 60 days, may
21 assert a violation of this chapter by way of offset as an original action, as a claim to enjoin
22 foreclosure, as a defense or counterclaim to an action to collect amounts owed, or to
23 preserve or obtain possession of the home secured by the home loan.

24 (d) It shall be a violation of this chapter for any person to attempt in bad faith to avoid the
25 application of this chapter by dividing any loan transaction into separate parts or engage
26 in the structuring of a home loan transaction as an open-end credit plan for the purpose of
27 evading the provisions of this chapter when the loan would have been a high-cost home
28 loan if the loan had been structured as a closed-end loan or engage in any other such
29 subterfuge with the intent of evading the provisions of this chapter.

30 7-6A-6.

31 (a) Any person found by a preponderance of the evidence to have violated this chapter
32 shall be liable to the borrower for the following:

33 (1) Actual damages, including consequential and incidental damages; the borrower shall
34 not be required to demonstrate reliance in order to receive actual damages;

1 (2) Statutory damages equal to the recovery of two times the interest paid under the loan
2 and forfeiture of interest due under the loan for any violations of paragraph (1), (2), or (3)
3 of Code Section 7-6A-3 or Code Section 7-6A-4;

4 (3) Punitive damages, when the violation was malicious or reckless; and

5 (4) Costs and reasonable attorney fees.

6 (b) A borrower may be granted injunctive, declaratory, and such other equitable relief as
7 the court deems appropriate in an action to enforce compliance with this chapter including,
8 but not limited to, the following:

9 (1) Notwithstanding any other provisions of law, a borrower seeking injunctive or other
10 equitable relief under the provisions of this chapter shall not be required to make a tender.
11 However, upon application to the court by the creditor, the court shall require the
12 borrower to pay into the registry of the court all regularly scheduled home loan payments
13 including property taxes and homeowners hazard insurance premiums if required by
14 escrow agreement which are the responsibility of the borrower payable to the creditor
15 under the terms of the home loan agreement which become due after the filing of the
16 legal action, said home loan payments to be paid as such become due, provided that
17 regularly scheduled payments shall not include any payments allegedly due under any
18 acceleration provision of the home loan . If the creditor and the borrower disagree as to
19 the amount of the home loan payments due, either or both of them may submit to the
20 court any written home loan agreement for the purpose of establishing the amount of
21 home loan payments to be paid into the registry of the court;

22 (2) If the borrower should fail to make any regularly scheduled payment as it becomes
23 due after the filing of this action, upon application to the court by the creditor, the court
24 may issue an order denying the borrower's petition for injunctive or other equitable
25 relief, and vacating any decree for injunctive or equitable relief previously entered by the
26 court; and

27 (3) The court shall order the clerk of the court to pay to the creditor the payments
28 claimed under the home loan agreement paid into the registry of the court as said
29 payments are made; provided, however, that, if the borrower claims that he or she is
30 entitled to all or any part of the funds and such claim is an issue of controversy in the
31 litigation, the court shall order the clerk to pay to the creditor without delay only that
32 portion of the funds to which the borrower has made no claim in the proceedings or may
33 make such other order as is appropriate under the circumstances. That part of the funds
34 which is a matter of controversy in the litigation shall remain in the registry of the court
35 until a determination of the issues by the trial court. If either party appeals the decision
36 of the trial court, that part of the funds equal to any sums found by the trial court to be
37 due from the creditor to the borrower shall remain in the registry of the court until a final

1 determination of the issues. The court shall order the clerk to pay to the creditor without
2 delay the remaining funds in court and all payments of future home loan payments made
3 into court pursuant to paragraph (1) of this subsection unless the borrower can show good
4 cause that some or all of such payments should remain in court pending a final
5 determination of the issues.

6 (c) The remedies provided in this Code section shall be cumulative.

7 (d) Any violation of this chapter may be enforced pursuant to Code Section 9-11-23.

8 (e) The right of rescission granted and defined under 15 U.S.C. Section 1601, et seq., and
9 a right of rescission for any violations of paragraph (1), (2), or (3) of Code Section 7-6A-3
10 or Code Section 7-6A-4 shall be available to a borrower of a high-cost home loan at any
11 time during the term of the loan.

12 (f) The brokering of a home loan that violates the provisions of this chapter shall constitute
13 a violation of such provisions.

14 (g) Notwithstanding any other provision of state law, no home loan agreement shall
15 include any provision that waives any federal or state constitutional right of borrowers or
16 limits their remedies available in law or equity, whether acting individually or on behalf
17 of others similarly situated, or their rights to civil discovery or appeal. In addition, any
18 provision of a home loan agreement that requires a party to assert any claim in a forum that
19 is less convenient, more costly, or more dilatory for the resolution of the dispute than a
20 judicial forum established in this state is unconscionable and void.

21 (h) An action under this chapter may be brought within four years of the date of the last
22 payment made by the borrower under the home loan.

23 (i) The remedies provided in this Code section are not intended to be the exclusive
24 remedies available to a borrower nor must the borrower exhaust any administrative
25 remedies provided under this chapter or any other applicable law before proceeding under
26 this Code section.

27 7-6A-7.

28 (a) The Attorney General, the district attorneys of this state, and the commissioner of
29 banking and finance shall have jurisdiction to enforce this chapter through their general
30 regulatory powers and through civil process. The Commissioner of Insurance shall have
31 like authority to enforce paragraph (1) of Code Section 7-6A-3.

32 (b) Any person, including members, officers, and directors of a creditor, who knowingly
33 violates this chapter is guilty of a misdemeanor and, on conviction, is subject to a fine not
34 exceeding \$1,000.00 or to imprisonment not exceeding 6 months, or both.

1 7-6A-8.

2 A creditor in a home loan who, when acting in good faith, fails to comply with the
3 provisions of this chapter will not be deemed to have violated this chapter if the creditor
4 establishes that either:

5 (1) Within 30 days of the loan closing and prior to receiving any notice from the
6 borrower of the compliance failure, the creditor has made appropriate restitution to the
7 borrower and appropriate adjustments are made to the loan; or

8 (2) Within 60 days of the loan closing and prior to receiving any notice from the
9 borrower of the compliance failure and the compliance failure was not intentional and
10 resulted from a bona fide error notwithstanding the maintenance of procedures reasonably
11 adapted to avoid such errors, the borrower is notified of the compliance failure,
12 appropriate restitution is made to the borrower, and appropriate adjustments are made to
13 the loan. Examples of a bona fide error include clerical, calculation, computer
14 malfunction and programming, and printing errors. An error of legal judgment with
15 respect to a person's obligations under this chapter is not a bona fide error.

16 7-6A-9.

17 The provisions of this chapter shall be severable and, if any phrase, clause, sentence, or
18 provision is declared to be invalid or is preempted by federal law or regulation, the validity
19 of the remainder of this chapter shall not be affected thereby. If any provision of this
20 chapter is declared to be inapplicable to any category of persons or any specific category,
21 type, or kind of loan or portions thereof, the provisions of this chapter shall nonetheless
22 continue to apply with respect to all other persons and all other loans or portions thereof.

23 7-6A-10.

24 No municipality or county shall enact any ordinance or law that regulates the terms of
25 home loans or that makes the eligibility of any person or entity to do business with the
26 municipality or county dependent upon the terms of home loans originated or serviced by
27 such person or entity."

28 **SECTION 2.**

29 This Act shall become effective July 1, 2002, and shall apply with respect to all home loans
30 made or entered into after that date.

31 **SECTION 3.**

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