

Senate Bill 70

By: Senators Fort of the 39th, Polak of the 42nd, Haines of the 46th, Thomas of the 2nd and Tate of the 38th

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 list prohibited practices and limitations relating to making or refinancing
4 home loans; to provide for prohibited practices and limitations relating to high-cost home
5 loans; to create specific and numerous consumer protections for high-cost home loans; to
6 provide for penalties and remedies and enforcement; to provide for exceptions for certain
7 unintentional violations; to provide for related matters; to provide for severability; to provide
8 for applicability and an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

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

13 style="text-align:center">"CHAPTER 6A

14 7-6A-1.

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

16 7-6A-2.

17 As used in this chapter, the term:

18 (1) 'Affiliate' means any company that controls, is controlled by, or is under common
19 control with another company, as set forth in 12 U.S.C. Section 1841, et seq.

20 (2) 'Annual percentage rate' means the annual percentage rate for the loan calculated
21 according to the provisions of 15 U.S.C. Section 1606 and the regulations promulgated
22 thereunder by the Federal Reserve Board.

1 (3) 'Borrower' means any natural person obligated to repay a loan, including a
2 coborrower, cosigner, or guarantor.

3 (4) 'Credit insurance' means any credit life, credit disability, credit unemployment,
4 accident, health, or loss-of-income insurance or any other line or subline of insurance
5 which may become accepted as credit insurance by the insurance and lending industries
6 or any debt cancellation or suspension agreement or contract (whether or not the debt
7 cancellation or suspension agreement or contract coverage is insurance under applicable
8 law) or any similar product.

9 (5) 'High-cost home loan' means a home loan where:

10 (A) The annual percentage rate at consummation of the transaction will exceed by
11 more than eight percentage points the yield on treasury securities having comparable
12 periods of maturity on the fifteenth day of the month immediately preceding the month
13 in which the application for the extension of credit is received by the creditor;

14 (B) The total points and fees payable by the consumer at or before closing will exceed
15 the greater of 5 percent of the total loan amount or \$465.00; or

16 (C)(i) Premiums or other charges are financed, directly or indirectly, in the home loan
17 for any credit insurance; or

18 (ii) A prepayment fee or penalty is contracted for by the borrower and lender or is
19 charged.

20 Except with respect to the fact that subparagraph (A) of this paragraph refers to eight
21 percentage points rather than ten and the fact that subparagraph (B) of this paragraph
22 refers to five percentage points rather than eight, the determination of whether a home
23 loan is a high-cost home loan under subparagraph (A) or (B) of this paragraph shall be
24 in all respects the same as the determination of whether a mortgage is subject to
25 U.S.C. Section 1602(aa), except that: in the calculation of points and fees under
26 subparagraph (B) of this paragraph there shall also be included any amounts payable at
27 closing or financed for any credit insurance and all prepayment penalties that can be
28 charged under the home loan; and the commissioner of banking and finance shall by rule
29 annually adjust the \$465.00 amount specified in subparagraph (B) of this paragraph by
30 a percentage which shall reflect the impact of inflation or deflation on the type of
31 transactions subject to this paragraph, for which purpose the commissioner shall be
32 authorized but not required to make use of the federal Consumer Price Index if the
33 commissioner determines that such index accurately reflects such impact of inflation or
34 deflation.

35 (6) 'Home loan' means a loan or agreement to extend credit made to a natural person,
36 which loan is secured by a deed to secure debt, security deed, mortgage, security
37 instrument, deed of trust, or other document representing a security interest or lien upon

1 any interest in one-to-four family residential property or a manufactured home located
2 in Georgia, regardless of where made, including the renewal or refinancing of any such
3 loan. Without limiting the generality of the foregoing, the term specifically includes a
4 home equity line of credit or other similar agreement.

5 (7) 'Lender' means any person who makes a home loan or acts as a mortgage broker with
6 respect to a home loan.

7 (8) 'Residential property' means improved real property used or occupied, or intended
8 to be used or occupied, as the principal residence of a natural person. Such term does not
9 include rental property or second homes.

10
11 7-6A-3.

12 (a) It shall be unlawful for any lender in a home loan to finance, directly or indirectly, any
13 credit insurance; provided, however, that insurance premiums calculated and paid on a
14 monthly basis shall not be considered financed by the lender. In no event shall the amount
15 of credit insurance coverage for any home loan exceed the amount necessary to satisfy the
16 borrower's obligation on any given date during the life of such loan.

17 (b) No lender shall recommend or encourage default on an existing loan or other debt prior
18 to and in connection with the closing or planned closing of a home loan that refinances all
19 or any portion of such existing loan or debt.

20 (c) No lender shall charge late fees for the late payment of an installment due on a home
21 loan, unless:

22 (1) The fee does not exceed 5 percent of the past due installment;

23 (2) The fee is not charged more than once as a result of a single late payment; and

24 (3) The borrower has agreed to the imposition of the late fees in the home loan contract.

25 (d) No prepayment fees or penalties shall be contracted by the borrower and lender or
26 charged with respect to any home loan.

27 (e) No lender may knowingly or intentionally engage in the unfair act or practice of
28 flipping a home loan. Flipping a loan is the making of a home loan to a borrower that
29 refinances an existing home loan when the new loan has an interest rate that exceeds by
30 more than four percentage points the required net yield for a 90 day standard mandatory
31 delivery commitment for a reasonably comparable loan from either the Federal National
32 Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is
33 greater, and the new loan does not have reasonable, tangible net benefit to the borrower
34 considering all of the circumstances, including the terms of both the new and refinanced
35 loans, the cost of the new loan, and the borrower's circumstances.

36 (f) Any lender or home loan servicer must provide a home loan payoff quote that is
37 postmarked within five business days after receipt of a written request from any borrower

1 or borrower's representative. The first such payoff quote shall be without charge to the
2 borrower if sent by United States mail, regular delivery. The lender or home loan servicer
3 may impose a reasonable charge for subsequent requests or facsimile transmissions of a
4 payoff quote.

5 7-6A-4.

6 In addition to the limitations and conditions specified in Code Section 7-6A-3, a high-cost
7 home loan shall be subject to the following limitations and prohibited practices:

8 (1) No call provision: No high-cost home loan may contain a provision that permits the
9 lender, in its sole discretion, to accelerate the indebtedness. This provision does not
10 apply when repayment of the loan has been accelerated by default, pursuant to a
11 due-on-sale provision, or pursuant to some other provision of the loan documents
12 unrelated to the payment schedule;

13 (2) No balloon payment: No high-cost home loan may contain a scheduled payment that
14 is more than twice as large as the average of earlier scheduled payments. This provision
15 does not apply when the payment schedule is adjusted to the seasonal or irregular income
16 of the borrower;

17 (3) No negative amortization: No high-cost home loan may contain a payment schedule
18 with regular periodic payments that cause the principal balance to increase at any time
19 over the course of the loan because the regular periodic payments do not cover the full
20 amount of interest due;

21 (4) No increased interest rate: No high-cost home loan may contain a provision that
22 increases the interest rate after default. This provision does not apply to interest rate
23 changes in a variable rate loan otherwise consistent with the provisions of the loan
24 documents, provided the change in the interest rate is not triggered by the event of default
25 or the acceleration of the indebtedness;

26 (5) No advance payments: No high-cost home loan may include terms under which
27 more than two periodic payments required under the loan are consolidated and paid in
28 advance from the loan proceeds provided to the borrower;

29 (6) No modification or deferral fees: A lender may not charge a borrower any fees or
30 other charges to modify, renew, extend, or amend a high-cost home loan or to defer any
31 payment due under the terms of a high-cost home loan;

32 (7) No mandatory arbitration clause: No high-cost loan may be subject to a mandatory
33 arbitration clause that limits in any way the right of the borrower to seek relief through
34 the judicial process;

35 (8) No lending without home ownership counseling: A lender may not make a high-cost
36 home loan without first receiving certification from a counselor approved by the United

1 States Department of Housing and Urban Development, the Georgia Housing and
2 Finance Authority, or the lender's regulatory agency of jurisdiction that the borrower has
3 received counseling on the advisability of the loan transaction and the appropriate loan
4 for the borrower;

5 (9) No lending without due regard to repayment ability: A lender may not make a
6 high-cost home loan unless the lender reasonably believes at the time the loan is
7 consummated that one or more of the borrowers who reside in the home, when
8 considered individually or collectively, will be able to make the scheduled payments to
9 repay the obligation based upon a consideration of their current and expected income,
10 current obligations, employment status, and other financial resources (other than the
11 borrower's equity in the dwelling which secures repayment of the loan). A high-cost
12 home lender who follows the debt-to-income ratio listed in 38 C.F.R. Section
13 36.4337(c)(1) and as defined in C.F.R. Section 36.4337(d) and follows the residual
14 income guidelines established in 38 C.F.R. Section 36.4337(e) and VA Form 26-6393
15 shall benefit from a rebuttable presumption that the lender made the loan with due regard
16 to repayment ability;

17 (10) No financing of fees or charges: In making a high-cost home loan, a lender may not
18 directly or indirectly finance:

19 (A) Any prepayment fees or penalties payable by the borrower in a refinancing
20 transaction if the lender or an affiliate of the lender is the noteholder of the note being
21 refinanced;

22 (B) Any points and fees; or

23 (C) Any other charges payable to third parties;

24 (11) No benefit from refinancing existing high-cost home loan with new high-cost home
25 loan: A lender may not charge a borrower points, fees, or other charges in connection
26 with a high-cost home loan if the proceeds of the high-cost home loan are used to
27 refinance an existing high-cost home loan held by the same lender or an affiliate of the
28 lender; and

29 (12) Restrictions on home-improvement contracts: A lender may not pay a contractor
30 under a home-improvement contract from the proceeds of a high-cost home loan unless:

31 (A) The lender is presented with a completion contract dated and signed by all parties
32 to the home-improvement contract showing that the home improvements have been
33 completed; and

34 (B) The instrument is payable to the borrower or jointly to the borrower and the
35 contractor or, at the election of the borrower, through a third-party escrow agent in
36 accordance with terms established in a written agreement signed by the borrower, the
37 lender, and the contractor prior to the disbursement.

1 7-6A-5.

2 (a) Any person who purchases or is otherwise assigned a high-cost home loan shall be
3 subject to all affirmative claims and defenses with respect to the loan that the borrower
4 could assert under this chapter against the original lender or broker of the loan.

5 (b) Any person who purchases or is otherwise assigned a high-cost home loan that was
6 made, arranged, or assigned by a person financing home improvements to the dwelling of
7 a borrower shall be subject to all affirmative claims and defenses which the borrower may
8 have against the seller, home improvement contractor, broker, or lender with respect to
9 such mortgage or home improvements.

10 7-6A-6.

11 (a) The Attorney General, the district attorneys of this state, the commissioner of banking
12 and finance, and the administrator of the 'Fair Business Practices Act of 1975' shall have
13 jurisdiction to enforce this chapter through their general regulatory powers and through
14 civil process. The Commissioner of Insurance shall have like authority to enforce
15 subsection (a) of Code Section 7-6A-3.

16 (b)(1) Any violation of subsection (a) or (d) of Code Section 7-6A-3 or any violation of
17 Code Section 7-6A-4 may be enforced pursuant to Code Section 9-11-23.

18 (2) Except as provided in paragraph (3) of this subsection, any person found to have
19 violated this chapter shall be liable to the borrower for the following:

20 (A) Actual damages, including consequential and incidental damages;

21 (B) Statutory damages equal to three times the finance charges agreed to in the home
22 loan agreement;

23 (C) If the violation was malicious or reckless and if the borrower was at the time of the
24 transaction an elder or disabled person as defined in Code Section 10-1-850, the
25 damages otherwise recoverable under subparagraphs (A) and (B) of this paragraph shall
26 be trebled; and

27 (D) Costs and reasonable attorneys' fees.

28 (3) In lieu of the remedies specified in paragraph (2) of this subsection, any person
29 found to have violated subsection (c) or (f) of Code Section 7-6A-3 shall be liable to the
30 borrower for the sum of \$500.00 as liquidated damages and, in addition thereto, for such
31 additional sums for any loss caused to the grantor plus reasonable attorney's fees.

32 (4) Any violation of this chapter constitutes a violation of Part 2 of Article 15 of Chapter
33 1 of Title 10, the 'Fair Business Practices Act of 1975,' but this paragraph shall not limit
34 the operation of paragraph (1) of this subsection.

35 (5) The remedies provided in this Code section are not intended to be the exclusive
36 remedies available to a borrower nor must the borrower exhaust administrative or other

1 remedies provided under this chapter or any other applicable law before proceeding under
2 this Code section.

3 (c) Any person, including any member, officer, or director of the lender, who knowingly
4 violates this chapter shall be guilty of a misdemeanor and, upon conviction, shall be subject
5 to a fine not to exceed \$5,000.00 or imprisonment not to exceed one year, or both such fine
6 and imprisonment.

7 (d)(1) A lender or assignee has no liability under this chapter for any failure to comply
8 with any requirement imposed under this chapter, if within 60 days after discovering an
9 error and prior to the institution of an action under this chapter or the receipt of written
10 notice of the error from the borrower, the lender or assignee notifies the borrower of the
11 error and makes whatever loan adjustments and restitution that are necessary.

12 (2) A creditor or assignee may not be held liable in any action brought under this chapter
13 if the creditor or assignee shows by a preponderance of the evidence that the violation
14 was not intentional and resulted from a bona fide error notwithstanding the maintenance
15 of procedures reasonably adapted to avoid such error and any appropriate restitution and
16 loan adjustments have been made. Examples of a bona fide error include, but are not
17 limited to, clerical, calculation, computer malfunction and programming, and printing
18 errors, except that an error of legal judgment with respect to a person's obligations under
19 this chapter is not a bona fide error.

20 7-6A-7.

21 The rights conferred by this chapter are independent of and in addition to any other rights
22 under other laws."

23 SECTION 2.

24 The provisions of this Act shall be severable, and if any phrase, clause, sentence, or provision
25 is declared to be invalid or is preempted by federal law or regulation, the validity of the
26 remainder of this Act shall not be affected thereby. If any provision of this Act is declared
27 to be inapplicable to any specific category, type, or kind of loan or points and fees, the
28 provisions of this Act shall nonetheless continue to apply with respect to all other loans and
29 points and fees.

30 SECTION 3.

31 This Act shall become effective July 1, 2001, and shall apply with respect to home loans
32 closed on or after that date.

- 1 **SECTION 4.**
- 2 All laws and parts of laws in conflict with this Act are repealed.