

Senate Bill 70

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

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 15  
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.