

SENATE SUBSTITUTE TO HB 1361:

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 covered home
 4 loans and high-cost home loans; to create specific and numerous consumer protections for
 5 covered home loans and high-cost home loans; to provide for penalties and enforcement; to
 6 provide for exceptions for unintentional violations; to provide for related matters; to provide
 7 for severability; to provide for legislative intent; to enact the "Prevention of Predatory
 8 Lending Through Education Act"; to define certain terms; to create within the Governor's
 9 Office of Consumer Affairs the Council for the Prevention of Predatory Lending Through
 10 Education; to provide for membership, terms, and officers; to provide that the council shall
 11 investigate the circumstances surrounding questionable home loans and to refer complaining
 12 consumers to appropriate governmental agencies or consumer protection organizations for
 13 assistance; to provide that the council shall design, approve, and implement education
 14 programs that inform and educate consumers, particularly those most vulnerable to being
 15 taken advantage of by predatory and unscrupulous lenders, as to the dangers and pitfalls of
 16 entering into a home loan through cooperation and contracting with community based
 17 organizations to accomplish such directive; to provide that the council shall refer individual
 18 cases in which there is evidence of an apparent violation of federal or state laws or
 19 regulations to the appropriate governmental agency for further investigation and action; to
 20 provide that the council shall conduct an extensive state-wide study of the root cause of home
 21 loans which go into default and foreclosure, using as much empirical data as are available,
 22 and recommend to the Governor proposed consumer protection legislation; to provide for
 23 applicability and an effective date; to repeal conflicting laws; and for other purposes.

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

25 **SECTION 1.**

H.B. 1361

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

3 "CHAPTER 6A

4 7-6A-1.

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

6 7-6A-2.

7 As used in this chapter, the term:

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

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

12 (3) 'Annual percentage rate' means the annual percentage rate for the loan calculated at
13 closing according to the provisions of 15 U.S.C. Section 1606, the regulations
14 promulgated thereunder by the Board of Governors of the Federal Reserve System, and
15 the Official Staff Commentary on Regulation Z published by the Board of Governors of
16 the Federal Reserve System. For purposes of this chapter, the annual percentage rate
17 shall be determined as follows:

18 (A) For a variable rate loan with a temporary initial rate that is lower than the rate that
19 will apply after the temporary rate expires, the annual percentage rate shall not include
20 such temporary initial rate;

21 (B) For a variable rate loan, the annual percentage rate shall be determined by using
22 the index rate and adding the maximum margin permitted during the term of the loan;
23 and

24 (C) For all other home loans with rates that may later increase, the rate shall be
25 determined based on the maximum interest rate permitted during the term of the loan.

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

33 (5) 'Borrower' means any natural person obligated to repay the loan including a
34 coborrower or cosigner.

1 (6) 'Covered home loan' means a home loan in which:

2 (A) Without regard to whether the loan transaction is or may be a 'residential mortgage
3 transaction' as that term is defined in 12 C.F.R. 226.2(a)(24), the annual percentage rate
4 of the loan at consummation is such that it exceeds (i) for a home loan secured by a first
5 lien, the higher of (I) four percentage points above prime rate or (II) two percentage
6 points above the required net yield for a 90 day standard mandatory delivery
7 commitment for a home loan with a reasonably comparable term from either the
8 Federal National Mortgage Association or the Federal Home Loan Mortgage
9 Corporation, whichever is greater, or (ii) for a home loan secured by a junior lien, the
10 higher of (I) five and one-half percentage points above prime rate or (II) three
11 percentage points above the required net yield for a 90 day standard mandatory delivery
12 commitment for a loan with a reasonably comparable term from either the Federal
13 National Mortgage Association or the Federal Home Loan Mortgage Corporation,
14 whichever is greater;

15 (B) The total points and fees payable in connection with the loan, excluding not more
16 than two bona fide discount points, exceed 3 percent of the total loan amount; or

17 (C) The home loan is such that it is considered a high-cost home loan under this
18 chapter.

19 (7) 'Creditor' means a person who extends consumer credit that is subject to a finance
20 charge or is payable by written agreement in more than four installments or a person who
21 purchases or is assigned a home loan. Creditor shall also mean any person brokering a
22 home loan, which shall include any person who directly or indirectly solicits, processes,
23 places, or negotiates home loans for others or offers to solicit, process, place, or negotiate
24 home loans for others or who closes home loans which may be in the person's own name
25 with funds provided by others and which loans are thereafter assigned to the person
26 providing the funding of such loans, provided that creditor shall not include a person who
27 is an attorney providing legal services in association with the closing of a home loan.

28 (8) 'High-cost home loan' means a home loan in which the terms of the loan meet or
29 exceed one or more of the thresholds as defined in paragraph (19) of this Code section.

30 (9) 'Home loan' means a loan, including an open-end credit plan where the principal
31 amount does not exceed the conforming loan size limit for a single-family dwelling as
32 established by the Federal National Mortgage Association and the loan is secured by a
33 mortgage, security deed, or deed to secure debt on real estate located in this state upon
34 which there is located or there is to be located a structure or structures, including a
35 manufactured home, designed principally for occupancy of from one to four families and
36 which is or will be occupied by a borrower as the borrower's principal dwelling, except
37 that home loan shall not include a reverse mortgage transaction, a loan that provides

1 bridge financing for the initial construction of a borrower's dwelling on land owned by
2 the borrower, or a loan primarily for business, agricultural, or commercial purposes.

3 (10) 'Make' or 'makes' means to originate a loan or to engage in brokering of a home loan
4 including the soliciting, processing, placing, or negotiating of a home loan made or
5 offered by a person brokering a home loan.

6 (11) 'Manufactured home' means a structure, transportable in one or more sections,
7 which in the traveling mode is eight body feet or more in width or 40 body feet or more
8 in length or, when erected on site is 320 or more square feet and which is built on a
9 permanent chassis and designed to be used as a dwelling with a permanent foundation
10 when erected on land secured in conjunction with the real property on which the
11 manufactured home is located and connected to the required utilities and includes the
12 plumbing, heating, air-conditioning, and electrical systems contained therein; except that
13 such term shall include any structure which meets all the requirements of this paragraph
14 except the size requirements and with respect to which the manufacturer voluntarily files
15 a certification required by the secretary of the United States Department of Housing and
16 Urban Development and complies with the standards established under the National
17 Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C.
18 Section 5401, et seq. Such term does not include rental property or second homes or
19 manufactured homes when not secured in conjunction with the real property on which the
20 manufactured home is located.

21 (12) 'Open-end credit plan' or 'open-end loan' means a loan in which (A) a creditor
22 reasonably contemplates repeated transactions; (B) the creditor may impose a finance
23 charge from time to time on an outstanding balance; and (C) the amount of credit that
24 may be extended to the borrower during the term of the loan, up to any limit set by the
25 creditor, is generally made available to the extent that any outstanding balance is repaid.

26 (13) 'Points and fees' means:

27 (A) All items included in the definition of finance charge in 12 C.F.R. 226.4(a) and 12
28 C.F.R. 226.4(b) except interest or the time price differential. All items excluded under
29 12 C.F.R. 226.4(c)(7) are excluded from points and fees provided that the creditor does
30 not receive direct or indirect compensation in connection with the charge and the charge
31 is not paid to an affiliate of the creditor;

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

36 (C) Premiums or other charges for credit life, credit accident, credit health, credit
37 personal property, or credit loss-of-income insurance or debt cancellation coverage,

1 whether or not the debt cancellation coverage is insurance under applicable law, that
2 provides for cancellation of all or part of a borrower's liability in the event of loss of
3 life, health, personal property, or income or in the case of accident written in connection
4 with a home loan and premiums or other charges for life, accident, health, or
5 loss-of-income insurance without regard to the identity of the ultimate beneficiary of
6 such insurance. In determining points and fees for the purposes of this paragraph,
7 premiums or other charges shall only include those payable at or before loan closing
8 and are included whether they are paid in cash or financed and whether the amount
9 represents the entire premium for the coverage or an initial payment;

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

12 (E) All prepayment fees or penalties that are charged to the borrower if the loan
13 refinances a previous loan made or currently held or serviced by the same creditor or
14 an affiliate of the creditor; and

15 (F) For open-end loans, points and fees are calculated in the same manner as for loans
16 other than open-end loans, based on the minimum points and fees that a borrower
17 would be required to pay in order to draw on the open-end loan an amount equal to the
18 total credit line and maintain the outstanding balance for the term of the loan.

19 (14) 'Prime rate' means the most recent bank prime loan rate published by the Board of
20 Governors of the Federal Reserve System, as published in statistical release H-15 or any
21 publication which may supersede it, as of the day a home loan is consummated.

22 (15) 'Process,' 'processes,' or 'processing' means to act as a processor.

23 (16) 'Processor' means any person that prepares paperwork necessary for or associated
24 with the closing of a home loan, including but not limited to promissory notes,
25 disclosures, deeds, and closing statements, provided that processor shall not include
26 persons on the grounds that they are engaged in data processing or statement generation
27 services for home loans.

28 (17) 'Servicer' means the same as set forth in 24 C.F.R. 3500.2.

29 (18) 'Servicing' means the same as set forth in 24 C.F.R. 3500.2.

30 (19) 'Threshold' means:

31 (A) Without regard to whether the loan transaction is or may be a 'residential mortgage
32 transaction' as that term is defined in 12 C.F.R. 226.2(a)(24), the annual percentage rate
33 of the loan is such that it equals or exceeds that set out in Section 152 of the Home
34 Ownership and Equity Protection Act of 1994, 15 U.S.C. Section 1602(aa), and the
35 regulations adopted pursuant thereto by the Federal Reserve Board, including Section
36 12 C.F.R. 226.32; or

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

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

(21) 'Variable rate loan' means any home loan where the rate of interest charged may change during the term of the loan, provided such rate is calculated by using an index that can change due to circumstances beyond the direct control of the creditor or servicer and adding a margin.

7-6A-3.

All home loans shall be subject to the following limitations and prohibited practices:

(1) No creditor shall make a home loan that finances, directly or indirectly, (A) any credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance or debt cancellation coverage, whether or not the debt cancellation coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a home loan; or (B) any life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance; provided, however, that for the purposes of this Code section, any premiums or charges calculated and paid on a periodic basis that are not added to the principal of the loan shall not be considered financed directly or indirectly by the creditor;

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

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

1 (4) No creditor or servicer may charge a fee for informing or transmitting to any person
2 the balance due to pay off a home loan or to provide a release upon prepayment. When
3 such information is provided by facsimile or if it is provided upon request within 60 days
4 of the fulfillment of a previous request, a creditor or servicer may charge a processing fee
5 up to \$10.00. Payoff balances shall be provided within a reasonable time but in any event
6 no more than five business days after the request.

7 7-6A-4.

8 No creditor may engage in the unfair act or practice of 'flipping' a home loan. Flipping
9 occurs when a creditor makes a covered home loan to a borrower that refinances an
10 existing home loan that was consummated within the prior five years when the new loan
11 does not provide reasonable, tangible net benefit to the borrower considering all of the
12 circumstances, including the terms of both the new and refinanced loans, the cost of the
13 new loan, and the borrower's circumstances. In addition, the home loan refinancing
14 transaction shall be presumed to be a flipping where a covered home loan refinances an
15 existing home loan that was consummated within the prior five years and that is a special
16 mortgage originated, subsidized, or guaranteed by or through a state, tribal, or local
17 government or a nonprofit organization, which either bears a below-market interest rate at
18 the time the loan was originated or has nonstandard payment terms beneficial to the
19 borrower, such as payments that vary with income, are limited to a percentage of income,
20 or where no payments are required under specified conditions and where, as a result of the
21 refinancing, the borrower will lose one or more of the benefits of the special mortgage.

22 7-6A-5.

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

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

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

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

31 (2) A high-cost home loan shall not contain a scheduled payment that is more than twice
32 as large as the average of earlier scheduled payments. This provision does not apply when
33 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 a borrower is acting individually or on behalf of others
13 similarly situated, any provision of a high-cost home loan agreement that allows a party
14 to require a borrower to assert any claim or defense in a forum that is less convenient,
15 more costly, or more dilatory for the resolution of a dispute than a judicial forum
16 established in this state where the borrower may otherwise properly bring the claim or
17 defense or limits in any way any claim or defense the borrower may have is
18 unconscionable and void;

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

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

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

1 (A) The creditor or servicer is presented with an affidavit of the contractor that the
2 work has been completed, which affidavit meets the requirements of Code Section
3 44-14-361.2; and

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

8 (10) A creditor or servicer shall not charge a borrower any fees or other charges to
9 modify, renew, extend, or amend a high-cost home loan or to defer any payment due
10 under the terms of 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 or servicer of a high-cost home loan who has the legal right to foreclose must use the
17 judicial foreclosure procedures set out in Code Section 44-14-49 for judicial foreclosure
18 in equity, Code Section 44-14-180 for judicial foreclosure of a mortgage, or Code Section
19 44-14-210 for judicial foreclosure of a deed to secure debt, whichever is appropriate. The
20 borrower shall have the right to assert in such proceeding the nonexistence of a default
21 and any other claim or defense to acceleration and foreclosure including any based on any
22 violations of this chapter, though no such claim or defense shall be deemed a compulsory
23 counterclaim. The right of a creditor to seek a deficiency judgment against a borrower
24 following a judicial foreclosure of a high-cost home loan shall be subject to confirmation
25 by the court in accordance with the standards set forth in Code Section 44-14-161;

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

36 (13)(A) To cure a default under this paragraph a borrower shall not be required to pay
37 any charge, fee, or penalty attributable to the exercise of the right to cure a default as

1 provided for in this Code section, other than the fees specifically allowed by this Code
2 section. The borrower shall not be liable for any attorney fees relating to the borrower's
3 default that are incurred by the creditor or servicer prior to or during the 30 day period
4 set forth in this paragraph, nor for any such fees in excess of \$100.00 that are incurred
5 by the creditor or servicer after the expiration of the 30 day period but prior to the time
6 the creditor or servicer files a foreclosure action or takes other action to seize or transfer
7 ownership of the home. After the creditor or servicer files a foreclosure action or takes
8 other action to seize or transfer ownership of the home, the borrower shall only be
9 liable for attorney fees that are reasonable and actually incurred by the creditor or
10 servicer based on a reasonable hourly rate and a reasonable number of hours plus any
11 other reasonable and necessary expenses incurred by the creditor or servicer.

12 (B) If a default is cured prior to the initiation of any action to foreclose or to seize or
13 transfer a home, the creditor or servicer shall not institute the foreclosure proceeding
14 or other action for that default. If a default is cured after the initiation of any action to
15 foreclose, the creditor or servicer shall take such steps as are necessary to terminate the
16 foreclosure proceeding or other action.

17 (C) Before any action is filed to foreclose upon the home or other action is taken to
18 seize or transfer ownership of a home, a notice of the right to cure the default must be
19 delivered to the borrower informing the borrower of the following:

20 (i) The nature of the default claimed on the high-cost home loan and of the
21 borrower's right to cure the default by paying the sum of money required to cure the
22 default. If the amount necessary to cure the default will change during the 30 day
23 period after the effective date of the notice due to the application of a daily interest
24 rate or the addition of late fees as allowed by this chapter, the notice shall give
25 sufficient information to enable the borrower to calculate the amount at any point
26 during the 30 day period;

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

31 (iii) That, if the borrower does not cure the default by the date specified, the creditor
32 or servicer may take steps to terminate the borrower's ownership in the property by
33 commencing a foreclosure proceeding or other action to seize the home; and

34 (iv) The name and address of the creditor or servicer and the telephone number of a
35 representative of the creditor or servicer whom the borrower may contact if the
36 borrower disagrees with the creditor's or servicer's assertion that a default has

1 occurred or the correctness of the creditor's or servicer's calculation of the amount
2 required to cure the default;

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

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

11 7-6A-6.

12 (a) Notwithstanding any other provision of law, where a home loan was made, arranged,
13 or assigned by a person selling either a manufactured home or home improvements to the
14 dwelling of a borrower, the borrower may assert against the creditor, any assignee, or
15 holder in any capacity all affirmative claims and any defenses that the borrower may have
16 against the seller or home improvement contractor, provided that this subsection shall not
17 apply to loans other than high-cost home loans unless applicable law requires a certificate
18 of occupancy, inspection, or completion to be obtained and said certificate is not obtained.

19 (b) Notwithstanding any other provision of law, any person who purchases or is otherwise
20 assigned a high-cost home loan shall be subject to all affirmative claims and any defenses
21 with respect to the loan that the borrower could assert against the original creditor or
22 creditors of the loan.

23 (c) Notwithstanding any other provision of law, a borrower of a covered home loan, after
24 notice of acceleration or foreclosure of the loan or if in default more than 60 days, may
25 assert a violation of this chapter against any creditor or servicer by way of offset in an
26 original action, as a claim to enjoin foreclosure, as a defense or counterclaim to an action
27 to collect amounts owed, or to preserve or obtain possession of the home secured by the
28 home loan.

29 (d) It shall be a violation of this chapter for any person to attempt in bad faith to avoid the
30 application of this chapter by dividing any loan transaction into separate parts or structuring
31 a home loan transaction as an open-end loan for the purpose of evading the provisions of
32 this chapter when the loan would have been a high-cost home loan if the loan had been
33 structured as a closed-end loan or engaging in any other subterfuge with the intent of
34 evading any provision of this chapter.

35 7-6A-7.

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

3 (1) Actual damages, including consequential and incidental damages;

4 (2) Statutory damages equal to the recovery of two times the interest paid under the loan
5 and forfeiture of interest due under the loan for any violation of paragraph (1) or (2) of
6 Code Section 7-6A-3, any violation of Code Section 7-6A-4, or any violation of Code
7 Section 7-6A-5;

8 (3) Punitive damages subject to Code Section 51-12-5.1; and

9 (4) Costs and reasonable attorney fees.

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

13 (1) Notwithstanding any other provision of law, a court shall have the discretion not to
14 require a borrower of a covered home loan seeking injunctive or other equitable relief
15 under the provisions of this chapter to make a tender upon a showing that the borrower
16 has a reasonable likelihood of being successful on the merits. When tender is not
17 required by the court, upon application to the court by the creditor, the court shall require
18 the borrower to pay into the registry of the court all regularly scheduled home loan
19 payments including property taxes and homeowners hazard insurance premiums if
20 required by escrow agreement which are the responsibility of the borrower payable to the
21 creditor or servicer under the terms of the home loan agreement which become due after
22 the filing of the legal action, said home loan payments to be paid as such become due,
23 and such other expenses provided under the home loan agreement as the court may deem
24 just, provided that regularly scheduled payments shall not include any payments allegedly
25 due under any acceleration provision of the home loan. If the creditor or servicer and the
26 borrower disagree as to the amount of the home loan payments due, either or both of
27 them may submit to the court any written home loan agreement for the purpose of
28 establishing the amount of home loan payments to be paid into the registry of the court;

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

34 (3) The court shall order the clerk of the court to pay to the creditor or any person the
35 creditor may designate the payments claimed under the home loan agreement paid into
36 the registry of the court as said payments are made; provided, however, that, if the
37 borrower claims that he or she is entitled to all or any part of the funds and such claim is

1 an issue of controversy in the litigation, the court shall order the clerk to pay to the
2 creditor or any person the creditor may designate without delay only that portion of the
3 funds to which the borrower has made no claim in the proceedings or may make such
4 other order as is appropriate under the circumstances. That part of the funds which is a
5 matter of controversy in the litigation shall remain in the registry of the court until a
6 determination of the issues by the trial court. If either party appeals the decision of the
7 trial court, that part of the funds equal to any sums found by the trial court to be due from
8 the creditor or servicer to the borrower shall remain in the registry of the court until a
9 final determination of the issues. The court shall order the clerk to pay to the creditor or
10 any person the creditor may designate without delay the remaining funds in court and all
11 payments of future home loan payments made into court pursuant to paragraph (1) of this
12 subsection unless the borrower can show good cause that some or all of such payments
13 should remain in court pending a final determination of the issues.

14 (c) The remedies provided in this chapter shall be cumulative.

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

16 (e) The right of rescission granted and defined under 15 U.S.C. Section 1601, et seq., and
17 a right of rescission for any violation of paragraph (1) or (2) of Code Section 7-6A-3, any
18 violation of Code Section 7-6A-4, or any violation of Code Section 7-6A-5 shall be
19 available to a borrower of a high-cost home loan at any time during the term of the loan not
20 to exceed a period of 15 years after the consummation of the loan.

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

23 (g) Without regard to whether a borrower is acting individually or on behalf of others
24 similarly situated, any provision of a home loan agreement that allows a party to require
25 a borrower to assert any claim or defense in a forum that is less convenient, more costly,
26 or more dilatory for the resolution of a dispute than a judicial forum established in this state
27 where the borrower may otherwise properly bring the claim or defense or limits in any way
28 any claim or defense the borrower may have is unconscionable and void.

29 (h) An action under this chapter may be brought within four years of the date of the last
30 payment made or 15 years after the date of the first scheduled payment, whichever is
31 earlier, by the borrower under the home loan.

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

36 7-6A-8.

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

5 (b) Any person, including members, officers, and directors of a creditor, who knowingly
 6 violates this chapter is guilty of a misdemeanor and, on conviction, is subject to a fine not
 7 exceeding \$1,000.00 for each violation or to imprisonment not exceeding six months, or
 8 both.

9 7-6A-9.

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

13 (1) Within 90 days of the loan closing and prior to receiving any notice from the
 14 borrower of the compliance failure, the creditor or servicer has offered appropriate
 15 restitution to the borrower and appropriate adjustments are made to the loan; or

16 (2) Within 90 days of discovering a compliance failure and prior to receiving any notice
 17 of the compliance failure and the compliance failure was not intentional and resulted
 18 from a bona fide error notwithstanding the maintenance of procedures reasonably adapted
 19 to avoid such errors, the borrower is notified of the compliance failure, appropriate
 20 restitution is offered to the borrower, and appropriate adjustments are made to the loan.
 21 Examples of a bona fide error include clerical, calculation, computer malfunction and
 22 programming, and printing errors. An error of legal judgment with respect to a person's
 23 obligations under this chapter is not a bona fide error.

24 7-6A-10.

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

31 7-6A-11.

32 No municipality or county shall enact any ordinance or law that regulates the terms of
 33 home loans or that makes the eligibility of any person or entity to do business with the

1 municipality or county dependent upon the terms of home loans originated or serviced by
2 such person or entity.

3 7-6A-12.

4 (a) This Code section shall be known and may be cited as the 'Prevention of Predatory
5 Lending Through Education Act.'

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

7 (1) 'Council' means the Council for the Prevention of Predatory Lending Through
8 Education created by this Code section.

9 (2) 'Home loan' means a loan or agreement to extend credit made to a natural person,
10 which loan is secured by a deed to secure debt, security deed, mortgage, security
11 instrument, deed of trust, or other document representing a security interest or lien upon
12 any interest in one-to-four family residential property or a manufactured home located
13 in Georgia, regardless of where made, including the renewal or refinancing of any such
14 loan. Without limiting the generality of the foregoing, the term specifically includes a
15 home equity line of credit or other similar agreement.

16 (3) 'Predatory or unscrupulous lending practices' includes, without limitation, making
17 unaffordable loans based on the borrower's home equity without regard to the borrower's
18 ability to repay the obligation; inducing a borrower to refinance a loan repeatedly and
19 charging additional points and fees, even though refinancing may not be in the borrower's
20 interest; and engaging in fraud or deception to conceal the true nature of the loan
21 obligation from an unsuspecting or unsophisticated borrower.

22 (c) There is created within the Governor's Office of Consumer Affairs the Council for the
23 Prevention of Predatory Lending Through Education to be composed of four members
24 appointed by the Governor, four members appointed by the President of the Senate, and
25 four members appointed by the Speaker of the House of Representatives. The members
26 appointed should represent every area of the state and should come from a diversity of
27 economic and consumer advocacy backgrounds. The members shall serve without
28 compensation but shall receive the same per diem and mileage allowance as authorized for
29 members of the General Assembly. The administrator or his or her designee shall serve as
30 chairperson. The members of the council shall elect such other officers as the council
31 deems necessary. Of the initial four members appointed by each appointing authority, two
32 shall serve terms of one year and two shall serve terms of two years. Thereafter, members
33 shall serve terms of two years and may be reappointed in the same manner as the initial
34 appointment.

35 (d) The council shall meet upon the call of the chairperson; provided, however, that the
36 council shall meet no less often than once a month. The council shall have the authority,
37 when a majority of the members deem necessary, to hold public hearings throughout the

1 state and to receive input from citizens and organizations concerning local problems
2 involving predatory lending.

3 (e) The council shall have the following powers and duties:

4 (1) To design and approve education programs that inform and educate consumers,
5 particularly those most vulnerable to being taken advantage of by predatory or
6 unscrupulous lending practices, as to the dangers and pitfalls of entering into a home
7 loan;

8 (2) To cooperate with community based organizations to accomplish such directive. The
9 council may accept and review proposals from community based nonprofit organizations
10 to conduct such educational programs and enter into contracts with such organizations
11 for the provision of such services;

12 (3) To operate and publish a state-wide toll-free number to receive consumer complaints
13 relating to predatory or unscrupulous lending practices in relation to home loans. The
14 council shall also maintain a list of nonprofit consumer counselor organizations. Upon
15 the written complaint of a consumer, to investigate the circumstances surrounding a home
16 loan and, if appropriate, to refer the complaining consumer to appropriate governmental
17 agencies, consumer protection, or consumer counselor organizations for assistance;

18 (4) To refer individual allegations of predatory or unscrupulous lending practices in
19 which there is evidence of an apparent violation of federal or state laws or regulations to
20 the appropriate governmental agency for further investigation and action;

21 (5) To cooperate with legitimate lending institutions to assist the industry in identifying
22 and eliminating unscrupulous predatory lenders within the industry;

23 (6) To conduct an extensive state-wide study of the root cause of home loans which go
24 into default and foreclosure, using as much empirical data as are available, and to develop
25 and recommend to the Governor and the General Assembly proposed consumer
26 protection legislation; and

27 (7) To perform such other functions as necessary to carry out the intention of this Code
28 section."

29 SECTION 2.

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

32 SECTION 3.

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