

Senate Bill 17

By: Senators Cheeks of the 23rd, Harbison of the 15th, Stokes of the 43rd, Gillis of the 20th and
Dean of the 31st

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to crimes
2 involving forgery and fraudulent practices, so as to create the criminal offense of unlicensed
3 commercial loan sharking; to define the elements of such offense as making certain numbers
4 of loans which violate the criminal usury statute; to provide for applicability to all
5 transactions which are in economic reality loans, notwithstanding the use of other
6 nomenclature or terms; to provide for inapplicability to transactions by certain licensed
7 lenders and transactions lawful under certain statutes regulating loans and advances of credit;
8 to provide for investigatory jurisdiction of the administrator of the "Fair Business Practices
9 Act of 1975"; to provide for authority of the Attorney General to initiate and refer
10 prosecutions; to prescribe criminal penalties and punishment, including restitution; to provide
11 for civil remedies including enhanced damages and procedures including class actions; to
12 provide for other related matters; to provide for an effective date and applicability; to repeal
13 conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

15 Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to crimes involving
16 forgery and fraudulent practices, is amended by adding a new Article 9 to read as follows:

"ARTICLE 9

18
19 16-9-140.

20 There is created the criminal offense of unlicensed commercial loan sharking.

21 16-9-141.

22 (a) A person commits the offense of unlicensed commercial loan sharking when such
23 person as a lender makes ten or more loan transactions in any period of 365 or fewer

1 consecutive days at a rate of interest in excess of that specified in the criminal usury statute,
2 Code Section 7-4-18.

3 (b) This Code section shall apply with respect to all transactions in which the true purpose
4 and intent of the transaction are that one person lends or advances money or credit to
5 another person with the intention that the money lent or advanced shall be repaid together
6 with interest or any other charges for the use of the money or credit advanced. This Code
7 section shall apply with respect to any such transaction notwithstanding the fact that one
8 or more parties intend to disguise the nature of the transaction by means of any
9 nomenclature or terms designed to make the transaction appear to be or resemble a
10 transaction other than a loan. Without limiting the generality of the foregoing, any such
11 transaction shall constitute a loan transaction for purposes of this article notwithstanding
12 the fact that the transaction is denominated as a purchase, sale, lease, rental, check cashing
13 transaction, or other transaction.

14 16-9-142.

15 (a) Code Section 16-9-141 shall not apply to any transaction made by a person who at the
16 time of the transaction is licensed as or is acting as an employee of a person licensed as:

- 17 (1) A financial institution under Chapter 1 of Title 7, the 'Financial Institutions Code of
18 Georgia';
- 19 (2) A credit union under Chapter 2 of Title 7;
- 20 (3) A licensee under the 'Georgia Industrial Loan Act,' Chapter 3 of Title 7; or
- 21 (4) A credit card bank or domestic lender under Chapter 5 of Title 7, 'The Credit Card
22 and Credit Card Bank Act';

23 (b) Code Section 16-9-141 shall not apply to any transaction which is lawful under:

- 24 (1) 'The Retail Installment and Home Solicitation Sales Act,' Article 1 of Chapter 1 of
25 Title 10;
- 26 (2) The 'Motor Vehicle Sales Finance Act,' Article 2 of Chapter 1 of Title 10;
- 27 (3) Part 5 of Article 3 of Chapter 12 of Title 44, relating to pawnbrokers.

28 (c) The exemptions from Code Section 16-9-141 provided under this Code section shall
29 not exempt any person or transaction from any other law of this state, including without
30 limitation Code Section 7-4-18, to the extent that any such other law is applicable without
31 regard to this Code section. The General Assembly recognizes and intends that actions
32 which would violate Code Section 16-9-141 but for this Code section may also violate and
33 be punished or sanctioned as violations of other laws of this state, and no such other
34 punishment or sanction shall be abated by reason of this Code section.

35 16-9-143.

1 The administrator appointed under Code Section 10-1-395 shall have the authority to
2 investigate any complaints regarding unlicensed commercial loan sharking. In conducting
3 such investigations, the administrator shall have all investigative powers which are
4 available to the administrator under Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair
5 Business Practices Act of 1975.'

6 16-9-144.

7 The Attorney General shall have the authority to conduct the criminal prosecution of all
8 cases of financial identity fraud or to refer them to the district attorney in the county where
9 the crime was committed.

10 16-9-145.

11 In any criminal proceeding brought pursuant to this article, the crime shall be considered
12 to have been committed in any county in which any part of the unlicensed commercial loan
13 sharking took place, regardless of whether the defendant was ever actually in such county.

14 16-9-146.

15 A violation of this article shall be punishable by imprisonment for not less than one nor
16 more than ten years or by a fine not to exceed \$1,000.00 for each proven unlawful loan
17 transaction which is a part of the offense or by both such imprisonment and fine.

18 16-9-147.

19 In addition to being punished as provided in Code Section 16-9-146, a person found guilty
20 of commercial loan sharking may be ordered by the court to make restitution to victims of
21 all illegal interest and charges.

22 16-9-148.

23 A person who violates this article shall be civilly liable to each person from whom illegal
24 interest or charges have been collected for three times the amount of the illegal interest and
25 charges. A civil action under this Code section may be brought by an individual borrower
26 or on behalf of an ascertainable class of borrowers."

27 SECTION 2.

28 This Act shall become effective on the first day of the month following the month in which
29 this Act is approved by the Governor or becomes law without such approval; and this Act
30 shall apply with respect to loan transactions wherein money or credit is loaned or advanced
31 on or after that effective date.

SECTION 3.

1
2 All laws and parts of laws in conflict with this Act are repealed.