

The Senate Banking and Financial Institutions Committee offered the following substitute to SB 70:

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

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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
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., as from
20 time to time amended, and the regulations promulgated thereunder.

21 (2) 'Annual percentage rate' means the annual percentage rate for the loan calculated
22 according to the provisions of 15 U.S.C. Section 1606 and the regulations promulgated
23 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) 'Brokerage fee' or 'brokerage fees' means any payment made to anyone other than the
4 person who funds the high-cost home loan or his or her employees for procuring the
5 high-cost home loan including, but not limited to, a yield spread premium.

6 (5) 'Credit insurance' means any credit life, credit disability, credit unemployment,
7 accident, health, or loss-of-income insurance.

8 (6) 'High-cost home loan' means a home loan where:

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

13 (B) The total points and fees payable by the consumer at or before closing plus
14 brokerage fees will exceed the greater of 6 percent of the total loan amount or \$465.00.

15 Except with respect to the fact that subparagraph (A) of this paragraph refers to eight
16 percentage points and the fact that subparagraph (B) of this paragraph refers to six
17 percentage points, the determination of whether a home loan is a high-cost home loan
18 under subparagraph (A) or (B) of this paragraph shall be in all respects the same as the
19 determination of whether a mortgage is subject to 15 U.S.C. Section 1602(aa). The
20 commissioner of banking and finance shall by rule annually adjust the \$465.00 amount
21 specified in subparagraph (B) of this paragraph by a percentage which shall reflect the
22 impact of inflation or deflation on the type of transactions subject to this paragraph, for
23 which purpose the commissioner shall be authorized but not required to make use of the
24 federal Consumer Price Index if the commissioner determines that such index accurately
25 reflects such impact of inflation or deflation.

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

33 (8) 'Lender' means any person who makes a high-cost home loan or acts as a mortgage
34 broker with respect to a home loan.

35 (9) 'Residential property' means improved real property used or occupied as the principal
36 residence of a natural person. Such term does not include rental property or second
37 homes.

1 7-6A-3.

2 A high-cost home loan shall be subject to the following limitations and prohibited
3 practices:

4 (1) It shall be unlawful for any lender in a high-cost home loan to finance, directly or
5 indirectly, any credit insurance; provided, however, that insurance premiums calculated
6 and paid on a monthly basis shall not be considered financed by the lender;

7 (2) No lender shall recommend or encourage default on an existing high-cost home loan
8 or other debt prior to and in connection with the closing or planned closing of a high-cost
9 home loan that refinances all or any portion of such existing loan or debt;

10 (3) No lender shall charge late fees for the late payment of an installment due on a
11 high-cost home loan, unless:

12 (A) The fee does not exceed 5 percent of the past due installment;

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

14 (C) The borrower has agreed to the imposition of the late fees in the high-cost home
15 loan contract;

16 (4) No lender shall impose prepayment fees or penalties on any high-cost home loan
17 except under the following conditions:

18 (A) A prepayment fee or penalty shall be permitted only during the first 36 months
19 after the date of execution of a high-cost home loan. The prepayment fees or penalties
20 on any high-cost home loan shall not exceed 3 percent in the first year, 2 percent in the
21 second year, and 1 percent in the third year;

22 (B) A lender shall not include a prepayment fee in a high-cost home loan unless it
23 offers the borrower the option of choosing a similar loan product without a prepayment
24 fee. Any increase in the interest rate as a result of the borrower choosing not to have
25 a prepayment fee shall not exceed 1 percent; and

26 (C) No prepayment fee or penalty may be charged on a refinancing of a high-cost
27 home loan if the high-cost home loan being refinanced is owned by the refinancing
28 lender or its affiliate at the time of such refinancing;

29 (5) No lender may knowingly or intentionally engage in the unfair act or practice of
30 flipping a high-cost home loan. Flipping a high-cost home loan is the making of a
31 high-cost home loan to a borrower that refinances an existing high-cost home loan when
32 the new high-cost home loan does not have a reasonable benefit to the borrower
33 considering all of the circumstances, including the terms of both the new and refinanced
34 loans, the cost of the new loan, and the borrower's circumstances. A presumption of a
35 reasonable benefit to the borrower occurs in situations including, but not limited to,
36 where:

1 (A) The borrower's monthly payment to pay the new consolidated debt will be lower
2 than the total of all monthly obligations being financed, taking into account costs and
3 fees;

4 (B) There is a beneficial change for the borrower in the duration of the loan;

5 (C) The borrower receives a reasonable amount of cash in excess of and in relation to
6 the costs and fees as part of the refinancing; or

7 (D) There is a change from an adjustable rate loan to a fixed rate loan, taking into
8 account costs and fees.

9 Flipping shall not include any high-cost home loan made after a borrower has initiated
10 communications with a mortgage lender for the purpose of obtaining a mortgage loan and
11 the mortgage lender has not solicited such borrower directly by telephone or in person
12 prior to the borrower's request;

13 (6) In the making of a high-cost home loan, any lender or home loan servicer must
14 provide a high-cost home loan payoff quote that is postmarked within five business days
15 after receipt of a written request from any borrower or borrower's representative. The
16 first such payoff quote shall be without charge to the borrower if sent by United States
17 mail, regular delivery. The lender or home loan servicer may impose a reasonable charge
18 for subsequent requests or facsimile transmissions of a payoff quote;

19 (7) No high-cost home loan may contain a provision that permits the lender, in its sole
20 discretion, to accelerate the indebtedness. This provision does not apply when repayment
21 of the high-cost home loan has been accelerated by default, pursuant to a due-on-sale
22 provision, or pursuant to some other provision of the loan documents unrelated to the
23 payment schedule;

24 (8) No high-cost home loan may contain a scheduled payment that is more than twice as
25 large as the average of earlier scheduled payments if such balloon payment becomes due
26 and payable earlier than 60 months after the high-cost home loan's origination. This
27 provision does not apply when the payment schedule is adjusted to account for the
28 seasonal or irregular income of the borrower or if the purpose of the high-cost home loan
29 is a bridge loan made in connection with the acquisition or construction of a dwelling
30 intended to become the borrower's principal dwelling;

31 (9) No high-cost home loan may contain a payment schedule with regular periodic
32 payments that cause the principal balance to increase at any time over the course of the
33 high-cost home loan because the regular periodic payments do not cover the full amount
34 of interest due;

35 (10) No high-cost home loan may contain a provision that increases the interest rate after
36 default. This provision does not apply to interest rate changes in a variable rate loan
37 otherwise consistent with the provisions of the loan documents, provided the change in

1 the interest rate is not triggered by the event of default or the acceleration of the
2 indebtedness;

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

6 (12) A lender may not charge a borrower more than once in a 12 month period a fee
7 more than \$100.00 plus any accrued interest to modify, renew, extend, or amend a
8 high-cost home loan or to defer any payment due under the terms of a high-cost home
9 loan;

10 (13) No high-cost home loan may be subject to a mandatory arbitration clause that does
11 not:

12 (A) Comply with the rules set forth by a nationally recognized arbitration organization;

13 (B) Require the arbitration proceeding to be conducted:

14 (i) Within the federal judicial district in which the subject property is located;

15 (ii) At the city nearest the borrower's residence where a federal district court is
16 located; or

17 (iii) At such other location as may be mutually agreed by the parties;

18 (C) Require the lender to contribute at least 50 percent of the amount of any filing fee;
19 and

20 (D) Require the lender to pay standard daily arbitration fees including its own and
21 those of the borrower for at least the first day of arbitration;

22 (14) A lender may not make a high-cost home loan unless the lender or a mortgage
23 broker has given the following notice or substantially similar notice in writing to the
24 borrower within a reasonable time of determining the loan would be a high-cost home
25 loan but no later than the time the notice is required under the notice provision contained
26 in 12 C.F.R. 226.32(c), as amended from time to time:

27 **'NOTICE TO BORROWER**

28 If you obtain this high-cost home loan the lender will have a mortgage on your home.
29 You could lose your home and any money you have put into it if you do not meet your
30 obligations under the loan.

31 Mortgage loan rates and closing costs and fees vary based on many factors, including
32 your particular credit and financial circumstances, your employment history, the
33 loan-to-value requested, and the type of property that will secure your loan. The loan

1 rate and fees could also vary based on which lender or broker you select. As a
2 borrower, you should shop around and compare loan rates and fees.

3 You should also consider consulting a qualified independent credit counselor or other
4 experienced financial advisor regarding the rate, fees, and provisions of this mortgage
5 loan before you proceed. A list of qualified counselors is available by contacting the
6 Georgia Department of Banking and Finance at (770) 986-1633 or in writing at 2990
7 Brandywine Road, Suite 200, Atlanta, Georgia 30341-5565.

8 You are not required to complete this high-cost home loan agreement merely because
9 you have received these disclosures or have signed a high-cost home loan application.

10 Borrowing for the purpose of debt consolidation can be an appropriate financial
11 management tool. However, if you continue to incur significant new credit card charges
12 or other debts after this high-cost home loan is closed and then experience financial
13 difficulties, you could lose your home and any equity you have in it if you do not meet
14 your mortgage loan obligations.

15 Remember, property taxes and homeowner's insurance are your responsibility. Not all
16 lenders provide escrow services for these payments. You should ask your lender about
17 these services.

18 Also, your payments on existing debts contribute to your credit rating. You should not
19 accept any advice to ignore your regular payments to your existing creditors.';

20 (15) A lender may not make a high-cost home loan unless the lender reasonably believes
21 at the time the high-cost home loan is consummated that one or more of the borrowers
22 who reside in the home, when considered individually or collectively, will be able to
23 make the scheduled payments to repay the obligation based upon a consideration of their
24 current and expected income, current obligations, employment status, and other financial
25 resources (other than the borrower's equity in the dwelling which secures repayment of
26 the high-cost home loan);

27 (16) A lender may not require a borrower to directly or indirectly finance any portion of
28 the points, fees, or points and fees in a high-cost home loan. The borrower shall have the
29 option of paying such items by cash or other good funds at closing. The lender shall
30 include in a disclosure, provided at least three business days prior to consummation, the
31 total amount of closing costs, a statement that the borrower is not required to finance such

1 costs, and a statement of whether such costs are being financed by the borrower in this
2 particular transaction;

3 (17) A lender may not pay a contractor under a home-improvement contract from the
4 proceeds of a high-cost home loan unless:

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

8 (B) The instrument is payable to the borrower or jointly to the borrower and the
9 contractor or, at the election of the borrower, through a third-party escrow agent in
10 accordance with terms established in a written agreement signed by the borrower, the
11 lender, and the contractor prior to the disbursement; and

12 (18) In the making of a high-cost home loan, the amount of yield spread premium and
13 other compensation paid to mortgage brokers shall be disclosed to the borrower no later
14 than three days prior to closing the high-cost home loan.

15 7-6A-4.

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

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

25 (c) All high-cost home loans shall contain the following notice:

26 'Notice: This is a mortgage subject to special rules under the "Georgia Fair Lending Act."
27 Purchasers or assignees of this mortgage could be liable for all claims and defenses with
28 respect to the mortgage that the borrower could assert against the creditor.'

29 7-6A-5.

30 (a) The Attorney General, the district attorneys of this state, the commissioner of banking
31 and finance, and the administrator of the 'Fair Business Practices Act of 1975' shall have
32 jurisdiction to enforce this chapter through their general regulatory powers and through
33 civil process. The Commissioner of Insurance shall have like authority to enforce
34 paragraph (1) of Code Section 7-6A-3.

1 (b)(1) Any violation of this chapter constitutes a violation of Part 2 of Article 15 of
2 Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975.'

3 (2) The remedies provided in this Code section are not intended to be the exclusive
4 remedies available to a borrower nor must the borrower exhaust administrative or other
5 remedies provided under this chapter or any other applicable law before proceeding under
6 this Code section.

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

12 (4) 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-6.

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 January 1, 2002, and shall apply with respect to high-cost
32 home loans closed on or after that date.

SECTION 4.

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