

House Bill 142

By: Representatives Floyd of the 132nd, Shaw of the 143rd, Parrish of the 102nd, Royal of the 140th, Channell of the 77th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, so as to amend the "Georgia Fair Lending Act"; to provide for revisions to certain definitions; to provide for changes in limitations on late payment charges; to specify when a reasonable, tangible net benefit occurs; to provide for reasonable attorney's fees; to provide for certain exceptions and limitations consistent with federal law; to provide the Department of Banking and Finance with express authority to promulgate rules and regulations; to provide for good faith reliance on guidance from the Department of Banking and Finance; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is amended by striking Chapter 6A, the "Georgia Fair Lending Act," and inserting in its place the following:

"CHAPTER 6A

7-6A-1.

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

7-6A-2.

As used in this chapter, the term:

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

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

(3) 'Annual percentage rate' means the annual percentage rate for the loan calculated at closing according to the provisions of 15 U.S.C. Section 1606, the regulations

1 promulgated thereunder by the Board of Governors of the Federal Reserve System, and
2 the Official Staff Commentary on Regulation Z published by the Board of Governors of
3 the Federal Reserve System. ~~For purposes of this chapter, the annual percentage rate~~
4 ~~shall be determined as follows:~~

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

8 ~~(B) For a variable rate loan, the annual percentage rate shall be determined by using~~
9 ~~the index rate and adding the maximum margin permitted during the term of the loan;~~
10 ~~and~~

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

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

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

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

23 ~~(A) Without regard to whether the loan transaction is or may be a 'residential mortgage~~
24 ~~transaction' as that term is defined in 12 C.F.R. 226.2(a)(24), the annual percentage rate~~
25 ~~of the loan at consummation is such that it exceeds, as of noon ten business days prior~~
26 ~~to such consummation, (i) for a home loan secured by a first lien, the higher of (I) four~~
27 ~~percentage points above prime rate or (II) two percentage points above the required net~~
28 ~~yield for a 90 day standard mandatory delivery commitment for a home loan with a~~
29 ~~reasonably comparable term from either the Federal National Mortgage Association or~~
30 ~~the Federal Home Loan Mortgage Corporation, whichever is greater, or (ii) for a home~~
31 ~~loan secured by a junior lien, the higher of (I) five and one-half percentage points above~~
32 ~~prime rate or (II) three percentage points above the required net yield for a 90 day~~
33 ~~standard mandatory delivery commitment for a loan with a reasonably comparable term~~
34 ~~from either the Federal National Mortgage Association or the Federal Home Loan~~
35 ~~Mortgage Corporation, whichever is greater;~~

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

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

~~(6)(7) 'Creditor' means a person who extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments or a person who purchases or is assigned a home loan. Creditor shall also mean any person brokering a home loan, which shall include any person who directly or indirectly solicits, processes, places, or negotiates home loans for others or offers to solicit, process, place, or negotiate home loans for others or who closes home loans which may be in the person's own name with funds provided by others and which loans are thereafter assigned to the person providing the funding of such loans, provided that creditor shall not include~~ Creditor shall not include: (A) a servicer; (B) an assignee; (C) a purchaser; (D) any state or local housing finance agency or any other state or local governmental or quasi-governmental entity; or (E) a person who is an attorney providing legal services in association with the closing of a home loan.

~~(6) (7)~~ 'High-cost home loan' means a home loan in which the terms of the loan meet or exceed one or more of the thresholds as defined in paragraph (19) (17) of this Code section.

~~(9) (8)~~ 'Home loan' means a loan, including an open-end credit plan where the principal amount does not exceed the conforming loan size limit for a single-family dwelling as established by the Federal National Mortgage Association and the loan is secured by a mortgage, security deed, or deed to secure debt on real estate located in this state upon which there is located or there is to be located a structure or structures, including a manufactured home, designed principally for occupancy of from one to four families and which is or will be occupied by a borrower as the borrower's principal dwelling, except that home loan shall not include:

(A) A reverse mortgage transaction;

(B) A loan that provides bridge temporary financing for the acquisition of land by the borrower and initial construction of a borrower's dwelling thereon or the initial construction of a borrower's dwelling on land owned by the borrower;

(C) A bridge loan made to a borrower pending the sale of the borrower's principal dwelling or a temporary loan made to a borrower and secured by the borrower's principal dwelling pending the borrower's obtaining permanent financing for such principal dwelling;

(D) A loan secured by personal property including, but not limited to, a motor vehicle, motor home, boat, or watercraft and also secured by the borrower's principal dwelling to provide the borrower with potential income tax advantages when such personal property is the primary collateral for such loan;

(E) A new loan secured by a borrower's principal dwelling as a result of a lien taken in connection with a debt previously contracted or incurred when the loan documents for such new loan do not include a mortgage, security deed, or deed to secure debt expressly securing such new loan; or

(F) A a loan primarily for business, agricultural, or commercial purposes.

~~(10)~~ (9) 'Make' or 'makes' means to originate a loan or to engage in brokering of a home loan including the soliciting, processing, placing, or negotiating of a home loan made or offered by a person brokering a home loan.

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

~~(12)~~ (11) 'Open-end credit plan' or 'open-end loan' means a loan in which (A) a creditor reasonably contemplates repeated transactions; (B) the creditor may impose a finance charge from time to time on an outstanding balance; and (C) the amount of credit that may be extended to the borrower during the term of the loan, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

~~(13)~~ (12) 'Points and fees' means:

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

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

1 release fees, provided that the portion of any yield spread premium that is both
2 disclosed to the borrower in writing and used to pay bona fide and reasonable fees to
3 a person other than the creditor or an affiliate of the creditor for the following purposes
4 is exempt from inclusion in points and fees: fees for tax payment services; fees for
5 flood certification; fees for pest infestation and flood determination; appraisal fees; fees
6 for inspection performed prior to closing; credit reports; surveys; attorneys' fees, if the
7 borrower has the right to select the attorney from an approved list or otherwise; notary
8 fees; escrow charges, so long as not otherwise included under subparagraph (A) of this
9 paragraph; title insurance premiums; and fire and hazard insurance and flood insurance
10 premiums, provided that the conditions set forth in 12 C.F.R. 226.4(d)(2) are met;

11 (C) Premiums or other charges for credit life, credit accident, credit health, credit
12 personal property, or credit loss-of-income insurance, debt suspension coverage or debt
13 cancellation coverage, whether or not such coverage is insurance under applicable law,
14 that provides for cancellation of all or part of a borrower's liability in the event of loss
15 of life, health, personal property, or income or in the case of accident written in
16 connection with a home loan and premiums or other charges for life, accident, health,
17 or loss-of-income insurance without regard to the identity of the ultimate beneficiary
18 of such insurance. In determining points and fees for the purposes of this paragraph,
19 premiums or other charges shall only include those payable at or before loan closing
20 and are included whether they are paid in cash or financed and whether the amount
21 represents the entire premium for the coverage or an initial payment;

22 (D) The maximum prepayment fees and penalties that may be charged or collected
23 under the terms of the loan documents unless the creditor provides the borrower with
24 the option of a substantially similar loan product without a prepayment fee. Mortgage
25 interest that may accrue in advance of payment in full of a loan made under a local,
26 state, or federal government sponsored mortgage insurance or guaranty program,
27 including a Federal Housing Administration program, shall not be considered to be a
28 prepayment fee or penalty;

29 (E) All prepayment fees or penalties that are charged to the borrower if the loan
30 refinances a previous loan made or currently held ~~or serviced~~ by the same creditor or
31 an affiliate of the creditor;

32 (F) For open-end loans, points and fees are calculated in the same manner as for loans
33 other than open-end loans, based on the minimum points and fees that a borrower
34 would be required to pay in order to draw on the open-end loan an amount equal to the
35 total credit line; and

36 (G) Points and fees shall not include:

(i) Taxes, filing fees, recording, and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest;

(ii) Bona fide and reasonable fees paid to a person other than the creditor or an affiliate of the creditor for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees, if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included under subparagraph (A) of this paragraph; title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions in 12 C.F.R. 226.4(d)(2) are met;

(iii) Bona fide fees paid to a federal or state government agency that insures payment of some portion of a home loan, including, but not limited to, the Federal Housing Administration, the Department of Veterans Affairs, the United States Department of Agriculture for rural development loans, or the Georgia Housing and Finance Authority; and

(iv) Notwithstanding any provision to the contrary in this chapter, compensation in the form of premiums, commissions, or similar charges paid to a creditor or any affiliate of a creditor for the sale of: (I) title insurance; or (II) insurance against loss of or damage to property or against liability arising out of the ownership or use of property, provided that the conditions in 12 C.F.R. 226.4(d)(2) are met.

~~(14) 'Prime rate' means the bank prime loan rate published by the Board of Governors of the Federal Reserve System, as published in statistical release H.15 or any publication that may supersede it.~~

~~(15)~~ (13) 'Process,' 'processes,' or 'processing' means to act as a processor.

~~(16)~~ (14) 'Processor' means any person that prepares paperwork necessary for or associated with the closing of a home loan, including but not limited to promissory notes, disclosures, deeds, and closing statements, provided that processor shall not include persons on the grounds that they are engaged in data processing or statement generation services for home loans.

~~(17)~~ (15) 'Servicer' means the same as set forth in 24 C.F.R. 3500.2.

~~(18)~~ (16) 'Servicing' means the same as set forth in 24 C.F.R. 3500.2.

~~(19)~~ (17) 'Threshold' means:

(A) Without regard to whether the loan transaction is or may be a 'residential mortgage transaction' as that term is defined in 12 C.F.R. 226.2(a)(24), the annual percentage rate of the loan is such that it equals or exceeds that set out in Section 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. Section 1602(aa), and the

regulations adopted pursuant thereto by the Federal Reserve Board, including Section 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) (18) '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~~ amount calculated as set forth in 12 C.F.R. 226.32(a) and under the Official Staff Commentary of the Board of Governors of the Federal Reserve System. 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~~ as the amount financed.

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

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, debt suspension coverage, or debt cancellation coverage, whether or not such 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 particular late payment ~~and. If a late payment charge is deducted from a payment made on the home loan and such deduction results in a subsequent default on a subsequent payment,~~ 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~~ imposed for such default. A lender may apply any payment made in the order of maturity to a prior period's payment due even if the result is late payment charges accruing on subsequent payments due; and

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

7-6A-4.

(a) No creditor may knowingly or intentionally engage in the unfair act or practice of 'flipping' a home loan. ~~Flipping occurs when a creditor makes a covered~~ a home loan is the consummating of a home loan to a borrower that refinances an existing home loan that was consummated within the prior five years when the new loan does not provide reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. In addition, the

(b) Subject to subsection (c) of this Code section, a presumption of reasonable, tangible net benefit to the borrower occurs when:

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

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

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

(D) There is a change from an adjustable rate loan to a fixed rate loan taking into account costs and fees; or

1 (E) At the time the home loan is consummated, the borrower's total monthly debts,
2 including amounts due under the home loan, do not exceed 50 percent of the borrower's
3 monthly gross income as verified by tax returns, payroll receipts, or other third-party
4 income verification.

5 (c) The home loan refinancing transaction shall be presumed to be a flipping where a
6 ~~covered~~ home loan refinances an existing home loan that was consummated within the
7 prior five years and that is a special mortgage originated, subsidized, or guaranteed by or
8 through a state, tribal, or local government or a nonprofit organization, which either bears
9 a below-market interest rate at the time the loan was originated or has nonstandard payment
10 terms beneficial to the borrower, such as payments that vary with income, are limited to
11 a percentage of income, or where no payments are required under specified conditions and
12 where, as a result of the refinancing, the borrower will lose one or more of the benefits of
13 the special mortgage.

14 (d) Notwithstanding any provision to the contrary contained in this chapter, in any action
15 instituted by a borrower who alleges that the defendant violated this Code section, the
16 presiding judge may, in the judge's discretion, allow reasonable attorneys' fees to the
17 prevailing party, such attorneys' fees to be taxed as a part of the court costs and payable
18 by the losing party upon a finding by the presiding judge that the party charged with the
19 violation has willfully engaged in the act or practice and there was unwarranted refusal by
20 such party to fully resolve the matter which constitutes the basis of such action.

21 7-6A-5.

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

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

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

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

30 (2) A high-cost home loan shall not contain a scheduled payment that is more than twice
31 as large as the average of earlier scheduled payments. This provision does not apply
32 when the payment schedule is adjusted to the seasonal or irregular income of the
33 borrower;

34 (3) A high-cost home loan shall not include payment terms under which the outstanding
35 principal balance will increase at any time over the course of the loan because the regular
36 periodic payments do not cover the full amount of interest due;

1 (4) A high-cost home loan shall not contain a provision that increases the interest rate
2 after default. This provision does not apply to interest rate changes in a variable rate loan
3 otherwise consistent with the provisions of the loan documents, provided the change in
4 the interest rate is not triggered by the event of default or the acceleration of the
5 indebtedness;

6 (5) A high-cost home loan shall not include terms under which more than two periodic
7 payments required under the loan are consolidated and paid in advance from the loan
8 proceeds provided to the borrower;

9 (6) Without regard to whether a borrower is acting individually or on behalf of others
10 similarly situated, any provision of a high-cost home loan agreement that allows a party
11 to require a borrower to assert any claim or defense in a forum that is less convenient,
12 more costly, or more dilatory for the resolution of a dispute than a judicial forum
13 established in this state where the borrower may otherwise properly bring the claim or
14 defense or limits in any way any claim or defense the borrower may have is
15 unconscionable and void;

16 (7) A creditor shall not make a high-cost home loan without first receiving certification
17 from a counselor with a third-party nonprofit organization approved by the United States
18 Department of Housing and Urban Development or the Georgia Housing and Finance
19 Authority that the borrower has received counseling on the advisability of the loan
20 transaction. No creditor, servicer, or its institution shall be required to contribute to the
21 funding of any nonprofit organization that provides counseling required pursuant to this
22 paragraph;

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

34 (9) A creditor or servicer shall not pay a contractor under a home improvement contract
35 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 who makes a high-cost home loan and who has the legal right to
12 foreclose shall provide notice of the intent to foreclose to the borrower in writing by
13 certified mail, return receipt requested, to the address of the borrower last known to the
14 creditor. Such notice shall be sent to the borrower at least 14 days prior to the publication
15 of the legal advertisement required by Code Section 44-14-162;

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

26 (13)(A) To cure a default under this Code section, a borrower shall not be required to
27 pay any charge, fee, or penalty attributable to the exercise of the right to cure a default
28 as provided for in this Code section, other than the fees specifically allowed by this
29 Code section. The borrower shall not be liable for any ~~attorney~~ attorneys' fees relating
30 to the borrower's default that are incurred by the creditor or servicer prior to or during
31 the 30 day period set forth in this paragraph, nor for any such fees in excess of \$100.00
32 that are incurred by the creditor or servicer after the expiration of the 30 day period but
33 prior to the time the creditor or servicer files a foreclosure action or takes other action
34 to seize or transfer ownership of the home. After the creditor or servicer files a
35 foreclosure action or takes other action to seize or transfer ownership of the home, the
36 borrower shall only be liable for ~~attorney~~ attorneys' fees that are reasonable and
37 actually incurred by the creditor or servicer based on a reasonable hourly rate and a

1 reasonable number of hours plus any other reasonable and necessary expenses incurred
2 by the creditor or servicer.

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

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

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

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

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

25 (iv) The name and address of the creditor or servicer and the telephone number of a
26 representative of the creditor or servicer whom the borrower may contact if the
27 borrower disagrees with the creditor's or servicer's assertion that a default has
28 occurred or the correctness of the creditor's or servicer's calculation of the amount
29 required to cure the default;

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

34 (15) All high-cost home loan documents that create a debt or pledge property as
35 collateral shall contain the following notice on the first page in a conspicuous manner:
36 'Notice: This is a mortgage subject to special rules under the "Georgia Fair Lending Act."

Purchasers or assignees of this mortgage may be liable for all claims and defenses by the borrower with respect to the mortgage.'

7-6A-6.

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

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

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

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

(e) Notwithstanding any other provision of this chapter or any provision of Georgia law, no person other than a creditor shall be liable for any violation of this chapter.

7-6A-7.

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

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

(2) Statutory damages equal to the recovery of two times the interest paid under the loan and forfeiture of interest under the loan for any violation of paragraph (1) or (2) of Code

1 Section 7-6A-3, any violation of Code Section 7-6A-4, or any violation of Code Section
2 7-6A-5;

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

4 (4) Costs and reasonable ~~attorney~~ attorneys' fees.

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

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

24 (2) If the borrower should fail to make any regularly scheduled payment under a
25 high-cost home loan as it becomes due after the filing of this action, upon application to
26 the court by the creditor or servicer, the court may issue an order denying the borrower's
27 petition for injunctive or other equitable relief, and vacating any decree for injunctive or
28 equitable relief previously entered by the court; and

29 (3) The court shall order the clerk of the court to pay to the creditor or any person the
30 creditor may designate the payments claimed under the high-cost home loan agreement
31 paid into the registry of the court as said payments are made; provided, however, that, if
32 the borrower claims that he or she is entitled to all or any part of the funds and such claim
33 is an issue of controversy in the litigation, the court shall order the clerk to pay to the
34 creditor or any person the creditor may designate without delay only that portion of the
35 funds to which the borrower has made no claim in the proceedings or may make such
36 other order as is appropriate under the circumstances. That part of the funds which is a
37 matter of controversy in the litigation shall remain in the registry of the court until a

determination of the issues by the trial court. If either party appeals the decision of the trial court, that part of the funds equal to any sums found by the trial court to be due from the creditor or servicer to the borrower shall remain in the registry of the court until a final determination of the issues. The court shall order the clerk to pay to the creditor or any person the creditor may designate without delay the remaining funds in court and all payments of future home loan payments made into court pursuant to paragraph (1) of this subsection unless the borrower can show good cause that some or all of such payments should remain in court pending a final determination of the issues.

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

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

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

(f) The brokering of a home loan by a broker registered or licensed as a broker under the laws of this state or any other jurisdiction that violates the provisions of this chapter shall constitute a violation of such provisions.

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

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

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

7-6A-8.

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

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

7-6A-9.

A creditor or servicer or an insurer providing insurance through premiums financed by a creditor of a home loan who, when acting in good faith, fails to comply with the provisions of this chapter will not be deemed to have violated this chapter if the creditor or servicer or insurer providing insurance through premiums financed by a creditor establishes that either:

(1) Within 90 days of the loan closing and prior to receiving any notice from the borrower of the compliance failure, (A) the creditor or servicer has offered appropriate restitution to the borrower and appropriate adjustments are made to the loan or (B) to correct a compliance failure of paragraph (1) of Code Section 7-6A-3, an insurer providing insurance through premiums financed by a creditor may provide appropriate restitution to the borrower by returning premiums paid plus interest charged on the premiums to the borrower upon receipt of notice of the compliance failure; or

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

7-6A-10.

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

1 7-6A-11.

2 No municipality or county shall enact any ordinance or law that regulates the terms of home
3 loans or that makes the eligibility of any person or entity to do business with the
4 municipality or county dependent upon the terms of home loans originated or serviced by
5 such person or entity.

6 7-6A-12.

7 The provisions of this chapter shall not apply to any bank, trust company, savings and loan,
8 savings bank, or credit union, respectively, that is chartered under the laws of this state or
9 any other state to the extent federal law precludes or preempts or has been determined to
10 preclude or preempt the application of the provisions of this chapter to any federally
11 chartered bank, trust company, savings and loan, savings bank, or credit union, respectively.

12 7-6A-13.

13 Without limitations on the power conferred by Chapter 1 of this title, the Department of
14 Banking and Finance shall have the authority to promulgate rules and regulations not
15 inconsistent with law for the enforcement of this chapter to effectuate the purposes of this
16 chapter and to clarify the meaning of terms. In complying with this chapter, a creditor's
17 good faith reliance on any formal or informal written guidance of the Department of
18 Banking and Finance previously made available to the general public shall constitute
19 prima-facie evidence of compliance with this chapter. The provisions of this Code section
20 shall apply even if, following the reliance, such guidance is amended, rescinded, or
21 determined by any judicial or other authority to be invalid."

22 SECTION 2.

23 This Act shall become effective upon its approval by the Governor or upon its becoming law
24 without such approval.

25 SECTION 3.

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