

Senate Bill 157

By: Senators Cheeks of the 23rd and Fort of the 39th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and
2 offenses, so as to declare a legislative intent to prohibit activities commonly referred to as
3 payday lending, deferred presentment services, or advance cash services and other similar
4 activities; to provide that it shall be unlawful to engage in the business of making certain
5 small loans; to provide for exemption for licensed and regulated activities; to define crimes
6 and declare penalties; to provide for civil remedies of borrowers; to provide for civil
7 penalties; to provide for collection of civil penalties in actions by the state or by private
8 parties on behalf of the state; to provide for taxation of proceeds received; to provide for
9 related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
13 amended by adding a new Chapter 17 to read as follows:

14 "CHAPTER 17

15 16-17-1.

16 Without limiting in any manner the scope of this chapter, the General Assembly declares
17 that it is the general intent of this chapter to make unlawful in this state the practice of
18 engaging in activities commonly referred to as payday lending, deferred presentment
19 services, or advance cash services and other similar activities.

20 16-17-2.

21 (a) It shall be unlawful in this state for any person to engage in any business which
22 consists in whole or in part of making loans of \$1,000.00 or less unless:

23 (1) Such person is:

1 (A) A financial institution as defined under Chapter 1 of Title 7, the 'Financial
2 Institutions Code of Georgia';

3 (B) Subject to Article 13 of Chapter 1 of Title 7, the 'Georgia Residential Mortgage
4 Act';

5 (C) A licensee under Chapter 3 of Title 7, the 'Georgia Industrial Loan Act'; or

6 (D) A credit card bank or domestic lender under Chapter 5 of Title 7, 'The Credit Card
7 and Credit Card Bank Act'; or

8 (2) Such loans are lawful under the terms of:

9 (A) Article 1 of Chapter 1 of Title 10, 'The Retail Installment and Home Solicitation
10 Sales Act';

11 (B) Article 2 of Chapter 1 of Title 10, the 'Motor Vehicle Sales Finance Act'; or

12 (C) Part 5 of Article 3 of Chapter 12 of Title 44, relating to pawnbrokers.

13 (b) This Code section shall apply with respect to all transactions in which funds are
14 advanced to be repaid at a later date, notwithstanding the fact that the transaction contains
15 one or more other elements. Without limiting the generality of the foregoing, the advance
16 of funds to be repaid at a later date shall be subject to this Code section, notwithstanding
17 the fact that the transaction also involves:

18 (1) The cashing or deferred presentment of a check or other instrument;

19 (2) The provision of an item, service, or commodity incidental to the advance of funds;
20 or

21 (3) Any other element introduced to disguise the true nature of the transaction as an
22 extension of credit.

23 (c) Any person who violates this Code section shall be guilty of a felony and punished by
24 imprisonment for not less than one nor more than ten years or by a fine not to exceed
25 \$1,000.00 for each proven unlawful loan transaction which is a part of the offense or by
26 both such imprisonment and fine.

27 16-7-3.

28 Any person who violates Code Section 16-7-2 shall be liable to the borrower in each
29 unlawful transaction for three times the amount of any interest or other charges to the
30 borrower. A civil action under this Code section may be brought on behalf of an individual
31 borrower or on behalf of an ascertainable class of borrowers.

32 16-7-4.

33 (a) Any person who violates Code Section 16-7-2 shall be liable to the state for a civil
34 penalty equal to three times the amount of any interest or charges to the borrowers in the
35 unlawful transactions.

1 (b) A civil action under this Code section may be brought by the Attorney General or any
2 district attorney. Where a successful civil action is brought by a district attorney one-half
3 of the damages recovered on behalf of the state shall be distributed to the counties
4 comprising the judicial circuit of such district attorney, pro rata according to the population
5 of the counties.

6 16-7-5.

7 (a)(1) A person may bring a civil action for a violation of Code Section 16-7-2 for the
8 person and for the State of Georgia. The action shall be brought in the name of the state.
9 The action may be dismissed only with the approval of the court.

10 (2) A copy of the complaint and written disclosure of substantially all material evidence
11 and information the person possesses shall be served on the Attorney General and the
12 district attorney of the circuit in which the complaint is filed. The complaint shall be filed
13 in camera, shall remain under seal for at least 30 days, and shall not be served on the
14 defendant until the court so orders. Either the Attorney General or the district attorney
15 may elect to intervene and proceed with the action within 30 days after service on them.

16 (3) Before the expiration of the 30 day period the state shall:

17 (A) Proceed with the action, in which case the action shall be conducted by the state;
18 or

19 (B) Notify the court that it declines to take over the action, in which case the person
20 bringing the action shall have the right to conduct the action.

21 (4) When a person brings an action under this Code section, no person other than the
22 state may intervene or bring a related action based on the claim underlying the pending
23 action.

24 (b)(1) If the state proceeds with the action, it shall have the primary responsibility for
25 prosecuting the action, and shall not be bound by an act of the person bringing the action.
26 Such person shall have the right to continue as a party to the action, subject to the
27 limitations set forth in paragraph (2) of this subsection.

28 (2)(A) The state may dismiss the action notwithstanding the objections of the person
29 initiating the action if the person has been notified by the state of the filing of the
30 motion and the court has provided the person with an opportunity for a hearing on the
31 motion.

32 (B) The state may settle the action with the defendant notwithstanding the objections
33 of the person initiating the action if the court determines, after a hearing, that the
34 proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon
35 a showing of good cause, such hearing may be held in camera.

1 (C) Upon a showing by the state that unrestricted participation during the course of the
2 litigation by the person initiating the action would interfere with or unduly delay the
3 state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of
4 harassment, the court may, in its discretion, impose limitations on the person's
5 participation.

6 (D) Upon a showing by the defendant that unrestricted participation during the course
7 of the litigation by the person initiating the action would be for purposes of harassment
8 or would cause the defendant undue burden or unnecessary expense, the court may limit
9 the participation by the person in the litigation.

10 (3) If the state elects not to proceed with the action, the person who initiated the action
11 shall have the right to conduct the action. If the state so requests, it shall be served with
12 copies of all pleadings filed in the action and shall be supplied with copies of all
13 deposition transcripts at the state's expense. When a person proceeds with the action, the
14 court, without limiting the status and rights of the person initiating the action, may
15 nevertheless permit the state to intervene at a later date upon a showing of good cause.

16 (c)(1) If the state proceeds with an action brought by a person under this Code section,
17 such person shall, subject to the second sentence of this paragraph, receive at least 15
18 percent but not more than 25 percent of the proceeds of the action or settlement of the
19 claim, depending upon the extent to which the person substantially contributed to the
20 prosecution of the action. Any such person shall also receive an amount for reasonable
21 expenses which the court finds to have been necessarily incurred, plus reasonable
22 attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the
23 defendant.

24 (2) If the state does not proceed with an action under this Code section, the person
25 bringing the action or settling the claim shall receive an amount which the court decides
26 is reasonable for collecting the civil penalty. The amount shall be not less than 25 percent
27 and not more than 30 percent of the proceeds of the action or settlement and shall be paid
28 out of such proceeds. Such person shall also receive an amount for reasonable expenses
29 which the court finds to have been necessarily incurred, plus reasonable attorneys' fees
30 and costs. All such expenses, fees, and costs shall be awarded against the defendant.

31 (d) In no event may a person bring an action under subsection (b) which is based upon
32 allegations or transactions which are the subject of a civil suit or an administrative civil
33 money penalty proceeding in which the state is already a party.

34 (e) The state is not liable for expenses which a person incurs in bringing an action under
35 this Code section.

1 16-7-6.

2 (a) There is imposed a state tax on all loans made in violation of this chapter. Such tax
3 shall be administered and collected in connection with the Georgia income taxation of the
4 person making such loans and shall be in addition to any other tax liability of such person.

5 (b) The tax imposed by this Code section shall be at the rate of 50 percent of all proceeds
6 received by a person from loans made in violation of this Code section.

7 (c) A person making loans in violation of this Code section shall declare and return the
8 proceeds subject to taxation under this Code section as a part of such person's Georgia
9 income tax return.

10 (d) The state revenue commissioner shall retain returns under this Code section apart from
11 all other returns and shall not disclose any part of such a return for any purpose other than
12 the collection of tax owed or a criminal prosecution involving tax matters. In a criminal
13 proceeding under this chapter, a person's return of proceeds under this Code section and
14 any evidence derived as a result of such return shall not be admissible."

15 **SECTION 2.**

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