

HOUSE SUBSTITUTE TO SENATE BILL 53:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance,
2 so as to amend the "Georgia Fair Lending Act"; to provide for revisions to certain definitions;
3 to provide for changes in limitations on late payment charges; to clarify that certain home
4 loan refinancing shall not be presumed to be a flipping; to provide for reasonable attorneys'
5 fees; to provide for liability of creditors for violations of the Act; to specify when and against
6 whom a borrower may assert claims and defenses for violations of the Act; to provide for
7 limits on liability for violations of the Act under certain circumstances; to provide for certain
8 exceptions and limitations consistent with federal law; to provide the Department of Banking
9 and Finance with express authority to promulgate rules and regulations; to provide for good
10 faith reliance on guidance from the Department of Banking and Finance; to provide for
11 related matters; to provide for an effective date; to repeal conflicting laws; and for other
12 purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 SECTION 1.

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

18 "CHAPTER 6A

19 7-6A-1.

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

21 7-6A-2.

22 As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

1 prime rate or ~~(H) three percentage points above the required net yield for a 90 day~~
 2 ~~standard mandatory delivery commitment for a loan with a reasonably comparable term~~
 3 ~~from either the Federal National Mortgage Association or the Federal Home Loan~~
 4 ~~Mortgage Corporation, whichever is greater;~~

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

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

9 ~~(6)~~(7) 'Creditor' means a person who both regularly extends consumer credit that is
 10 subject to a finance charge or is payable by written agreement in more than four
 11 installments ~~or a person who purchases or is assigned a home loan and is a person to~~
 12 whom the debt arising from the home loan transaction is initially payable. Creditor shall
 13 also mean any person brokering a home loan, which shall include any person who
 14 directly or indirectly for compensation solicits, processes, places, or negotiates home
 15 loans for others or offers to solicit, process, place, or negotiate home loans for others or
 16 who closes home loans which may be in the person's own name with funds provided by
 17 others and which loans are thereafter assigned to the person providing the funding of such
 18 loans, provided that creditor shall not include a person who is an attorney providing legal
 19 services in association with the closing of a home loan. A creditor shall not include: (A)
 20 a servicer; (B) an assignee; (C) a purchaser; or (D) any state or local housing finance
 21 agency or any other state or local governmental or quasi-governmental entity.

22 ~~(8)~~(7) 'High-cost home loan' means a home loan in which the terms of the loan meet or
 23 exceed one or more of the thresholds as defined in paragraph ~~(19)~~ (17) of this Code
 24 section.

25 ~~(9)~~(8) 'Home loan' means a loan, including an open-end credit plan where the principal
 26 amount does not exceed the conforming loan size limit for a single-family dwelling as
 27 established by the Federal National Mortgage Association and the loan is secured by a
 28 mortgage, security deed, or deed to secure debt on real estate located in this state upon
 29 which there is located or there is to be located a structure or structures, including a
 30 manufactured home, designed principally for occupancy of from one to four families and
 31 which is or will be occupied by a borrower as the borrower's principal dwelling, except
 32 that home loan shall not include:

33 (A) A a reverse mortgage transaction;

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

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

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

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

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

14 ~~(10)~~(9) 'Make' or 'makes' means to originate a loan or to engage in brokering of a home
 15 loan including the soliciting, processing, placing, or negotiating of a home loan made or
 16 offered by a person brokering a home loan.

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

32 ~~(12)~~(11) 'Open-end credit plan' or 'open-end loan' means a loan in which (A) a creditor
 33 reasonably contemplates repeated transactions; (B) the creditor may impose a finance
 34 charge from time to time on an outstanding balance; and (C) the amount of credit that
 35 may be extended to the borrower during the term of the loan, up to any limit set by the
 36 creditor, is generally made available to the extent that any outstanding balance is repaid.

37 ~~(13)~~(12) 'Points and fees' means:

1 (A) All items included in the definition of finance charge in 12 C.F.R. 226.4(a) and 12
2 C.F.R. 226.4(b) except interest or the time price differential. All items excluded under
3 12 C.F.R. 226.4(c)(7) are excluded from points and fees, provided that for items under
4 12 C.F.R. 226.4(c)(7) the creditor does not receive direct or indirect compensation in
5 connection with the charge and the charge is not paid to an affiliate of the creditor;

6 (B) All compensation paid directly or indirectly to a mortgage broker from any source,
7 including a broker that originates a loan in its own name in a table funded transaction,
8 including but not limited to yield spread premiums, yield differentials, and service
9 release fees, provided that the portion of any yield spread premium that is both
10 disclosed to the borrower in writing and used to pay bona fide and reasonable fees to
11 a person other than the creditor or an affiliate of the creditor for the following purposes
12 is exempt from inclusion in points and fees: fees for tax payment services; fees for
13 flood certification; fees for pest infestation and flood determination; appraisal fees; fees
14 for inspection performed prior to closing; credit reports; surveys; attorneys' fees, if the
15 borrower has the right to select the attorney from an approved list or otherwise; notary
16 fees; escrow charges, so long as not otherwise included under subparagraph (A) of this
17 paragraph; title insurance premiums; and fire and hazard insurance and flood insurance
18 premiums, provided that the conditions set forth in 12 C.F.R. 226.4(d)(2) are met;

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

30 (D) The maximum prepayment fees and penalties that may be charged or collected
31 under the terms of the loan documents. Mortgage interest that may accrue in advance
32 of payment in full of a loan made under a local, state, or federal government sponsored
33 mortgage insurance or guaranty program, including a Federal Housing Administration
34 program, shall not be considered to be a prepayment fee or penalty;

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

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

5 (G) Points and fees shall not include:

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

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

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

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

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

30 ~~(15)~~(13) 'Process,' 'processes,' or 'processing' means to act as a processor.

31 ~~(16)~~(14) 'Processor' means any person that prepares paperwork necessary for or
 32 associated with the closing of a home loan, including but not limited to promissory notes,
 33 disclosures, deeds, and closing statements, provided that processor shall not include
 34 persons on the grounds that they are engaged in data processing or statement generation
 35 services for home loans.

36 ~~(17)~~(15) 'Servicer' means the same as set forth in 24 C.F.R. 3500.2.

37 ~~(18)~~(16) 'Servicing' means the same as set forth in 24 C.F.R. 3500.2.

1 ~~(19)~~(17) 'Threshold' means:

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 is such that it equals or exceeds that set out in Section 152 of the Home
5 Ownership and Equity Protection Act of 1994, 15 U.S.C. Section 1602(aa), and the
6 regulations adopted pursuant thereto by the Federal Reserve Board, including Section
7 12 C.F.R. 226.32; or

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

12 ~~(20)~~(18) 'Total loan amount' means the ~~principal of the loan minus those points and fees~~
13 ~~as defined in paragraph (13) of this Code section that are included in the principal amount~~
14 ~~of the loan~~ amount calculated as set forth in 12 C.F.R. 226.32(a) and under the Official
15 Staff Commentary of the Board of Governors of the Federal Reserve System. For
16 open-end loans, the total loan amount shall be calculated using the total credit line
17 available under the terms of the home loan ~~minus those points and fees as defined in~~
18 ~~paragraph (13) of this Code section that are included in the total credit line~~ as the amount
19 financed.

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

24 7-6A-3.

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

26 (1) No creditor shall make a home loan that finances, directly or indirectly:

27 (A) Any credit life, credit accident, credit health, credit personal property, or credit
28 loss-of-income insurance, debt suspension coverage, or debt cancellation coverage,
29 whether or not such coverage is insurance under applicable law, that provides for
30 cancellation of all or part of a borrower's liability in the event of loss of life, health,
31 personal property, or income or in the case of accident written in connection with a
32 home loan; or

33 (B) Any life, accident, health, or loss-of-income insurance without regard to the
34 identity of the ultimate beneficiary of such insurance;

1 provided, however, that for the purposes of this Code section, any premiums or charges
 2 calculated and paid on a periodic monthly basis ~~that are not added to the principal of the~~
 3 ~~loan~~ shall not be considered financed directly or indirectly by the creditor;

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

7 (3) No creditor or servicer may charge a borrower a late payment charge unless the loan
 8 documents specifically authorize the charge, the charge is not imposed unless the
 9 payment is past due for ten days or more, and the charge does not exceed 5 percent of the
 10 amount of the late payment. A late payment charge may not be imposed more than once
 11 with respect to a single particular late payment ~~and~~. If a late payment charge is deducted
 12 from a payment made on the home loan and such deduction results in a subsequent
 13 default on a subsequent payment, no late payment charge may be ~~charged with respect~~
 14 ~~to any subsequent payment that would have been a full payment but for the previous~~
 15 ~~default or the imposition of the previous late payment charge~~ imposed for such default.
 16 A lender may apply any payment made in the order of maturity to a prior period's
 17 payment due even if the result is late payment charges accruing on subsequent payments
 18 due; and

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

25 7-6A-4.

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

33 (b) The home loan refinancing transaction shall be presumed to be a flipping where a
 34 ~~covered~~ high-cost home loan refinances an existing home loan that was consummated
 35 within the prior five years and that is a special mortgage originated, subsidized, or
 36 guaranteed by or through a state, tribal, or local government or a nonprofit organization,

1 which either bears a below-market interest rate at the time the loan was originated or has
 2 nonstandard payment terms beneficial to the borrower, such as payments that vary with
 3 income, are limited to a percentage of income, or where no payments are required under
 4 specified conditions and where, as a result of the refinancing, the borrower will lose one
 5 or more of the benefits of the special mortgage. Notwithstanding any provision to the
 6 contrary contained in this chapter, home loan refinancing transactions of first mortgage
 7 loans originated by, purchased by, or assigned to the Georgia Housing and Finance
 8 Authority shall not be presumed to be a flipping under this subsection.

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

18 7-6A-5.

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

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

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

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

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

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

34 (4) A high-cost home loan shall not contain a provision that increases the interest rate
 35 after default. This provision does not apply to interest rate changes in a variable rate loan
 36 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 (5) A high-cost home loan shall not include terms under which more than two periodic
4 payments required under the loan are consolidated and paid in advance from the loan
5 proceeds provided to the borrower;

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

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

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

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

33 (A) The creditor or servicer is presented with an affidavit of the contractor that the
34 work has been completed, which affidavit meets the requirements of Code Section
35 44-14-361.2; and

36 (B) The proceeds are disbursed in an instrument payable to the borrower or jointly to
37 the borrower and the contractor or, at the election of the borrower, through a third-party

1 escrow agent in accordance with terms established in a written agreement signed by the
2 borrower, the drafter of the instrument, and the contractor prior to the disbursement;

3 (10) A creditor or servicer shall not charge a borrower any fees or other charges to
4 modify, renew, extend, or amend a high-cost home loan or to defer any payment due
5 under the terms of a high-cost home loan;

6 (11) A creditor who makes a high-cost home loan and who has the legal right to
7 foreclose shall provide notice of the intent to foreclose to the borrower in writing by
8 certified mail, return receipt requested, to the address of the borrower last known to the
9 creditor. Such notice shall be sent to the borrower at least 14 days prior to the publication
10 of the legal advertisement required by Code Section 44-14-162;

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

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

35 (B) If a default is cured prior to the initiation of any action to foreclose or to seize or
36 transfer a home, the creditor or servicer shall not institute the foreclosure proceeding
37 or other action for that default. If a default is cured after the initiation of any action to

1 foreclose, the creditor or servicer shall take such steps as are necessary to terminate the
2 foreclosure proceeding or other action.

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

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

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

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

20 (iv) The name and address of the creditor or servicer and the telephone number of a
21 representative of the creditor or servicer whom the borrower may contact if the
22 borrower disagrees with the creditor's or servicer's assertion that a default has
23 occurred or the correctness of the creditor's or servicer's calculation of the amount
24 required to cure the default;

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

29 (15) All high-cost home loan documents that create a debt or pledge property as
30 collateral shall contain the following notice on the first page in a conspicuous manner:
31 'Notice: This is a mortgage subject to special rules under the "Georgia Fair Lending Act."
32 Purchasers or assignees of this mortgage may be liable for all claims and defenses by the
33 borrower with respect to the mortgage.'

34 7-6A-6.

35 (a) Notwithstanding any other provision of law, where a home loan was made, arranged,
36 or assigned by a person selling home improvements to the dwelling of a borrower, the

1 borrower may assert against the creditor, ~~any assignee, or holder in any capacity~~ all
 2 affirmative claims and any defenses that the borrower may have against the seller or home
 3 improvement contractor, provided that this subsection shall not apply to loans other than
 4 high-cost home loans unless applicable law requires a certificate of occupancy, inspection,
 5 or completion to be obtained and said certificate is not obtained.

6 (b) Notwithstanding any other provision of law, any person who purchases, ~~or is assigned,~~
 7 or otherwise assigned becomes a holder of a high-cost home loan shall be subject to all
 8 affirmative claims and any defenses with respect to the high-cost home loan that the
 9 borrower could assert against the ~~original creditor or creditors~~ of the high-cost home loan,
 10 unless the purchaser or holder demonstrates, by a preponderance of the evidence, that the
 11 purchaser or holder exercised reasonable due diligence at the time of purchase of the home
 12 loans, or within a reasonable time thereafter, intended to prevent the purchaser or holder
 13 from purchasing or taking assignment of high-cost home loans.

14 (c) ~~Notwithstanding any other provision of law, a borrower of a covered home loan, after~~
 15 ~~notice of acceleration or foreclosure of the loan or if in default more than 60 days, may~~
 16 ~~assert a violation of this chapter against any creditor or servicer by way of offset in an~~
 17 ~~original action, as a claim to enjoin foreclosure, as a defense or counterclaim to an action~~
 18 ~~to collect amounts owed, or to preserve or obtain possession of the home secured by the~~
 19 ~~home loan~~ The relief granted in an action pursuant to subsection (b) of this Code section:

20 (1) May be asserted by the borrower only in an individual action and shall not exceed the
 21 sum of the amount of all remaining indebtedness of the borrower under such loan and
 22 reasonable attorneys' fees in such individual action;

23 (2) May be sought by the borrower of a high-cost home loan after notice of acceleration
 24 or foreclosure of the high-cost home loan, asserting a violation of Code Section 7-6A-4
 25 or 7-6A-5 in an individual action to enjoin foreclosure or to preserve or obtain possession
 26 of the home secured by the high-cost home loan; and

27 (3) Must be brought within one year from the date of the occurrence of the violation;
 28 provided, however, a borrower shall not be barred from asserting a violation of Code
 29 Section 7-6A-5 in an action to collect the debt which was brought more than one year
 30 from the date of the occurrence of such a violation as a matter of defense by recoupment
 31 or set-off in such action except as otherwise provided by law."

32 (d) It shall be a violation of this chapter for any person to attempt in bad faith to avoid the
 33 application of this chapter by dividing any loan transaction into separate parts or structuring
 34 a home loan transaction as an open-end loan for the purpose of evading the provisions of
 35 this chapter when the loan would have been a high-cost home loan if the loan had been

1 structured as a closed-end loan or engaging in any other subterfuge with the intent of
2 evading any provision of this chapter.

3 7-6A-7.

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

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

7 (2) Statutory damages equal to the recovery of two times the interest paid under the loan
8 and forfeiture of interest under the loan for any violation of paragraph (1) or (2) of Code
9 Section 7-6A-3, any violation of Code Section 7-6A-4, or any violation of Code Section
10 7-6A-5;

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

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

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

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

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

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

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

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

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

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

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

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

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

5 7-6A-8.

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

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

14 7-6A-9.

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

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

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

1 7-6A-10.

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

8 7-6A-11.

9 No municipality or county shall enact any ordinance or law that regulates the terms of home
10 loans or that makes the eligibility of any person or entity to do business with the
11 municipality or county dependent upon the terms of home loans originated or serviced by
12 such person or entity.

13 7-6A-12.

14 The provisions of this chapter shall not apply to any bank, trust company, savings and loan,
15 savings bank, credit union, or subsidiary thereof, respectively, that is chartered under the
16 laws of this state or any other state only to the extent federal law precludes or preempts or
17 has been determined to preclude or preempt the application of the provisions of this chapter
18 to any federally chartered bank, trust company, savings and loan, savings bank, or credit
19 union, respectively, and such federal preclusion or preemption shall apply only to the same
20 type of state chartered entity as the federally chartered entity affected; provided, however,
21 the provisions of this chapter, including subsection (f) of Code Section 7-6A-7, shall be
22 applicable to an independent mortgage broker for any loan originated or brokered by the
23 broker that is initially funded by any state or federally chartered bank, trust company,
24 savings and loan, savings bank, or credit union.

25 7-6A-13.

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

SECTION 2.

1

2

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

3

SECTION 3.

4

5

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