

Senate Bill 157

By: Senators Cheeks of the 23rd, Cagle of the 49th, Stephens of the 51st and Starr of the 44th

AS PASSED SENATE

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. This chapter in no way
 20 impairs or restricts the authority granted to the commissioner of banking and finance, the
 21 Industrial Loan Commissioner, or any other regulatory authority with concurrent
 22 jurisdiction over the matters stated herein.

1 16-17-2.

2 (a) It shall be unlawful in this state for any person to engage in any business which
3 consists in whole or in part of making loans of \$3,000.00 or less unless:

4 (1) Such person is engaging in financial transactions expressly permitted pursuant to:

5 (A) The laws regulating financial institutions as defined under Chapter 1 of Title 7,
6 the 'Financial Institutions Code of Georgia';

7 (B) The laws regulating state and federally chartered credit unions;

8 (C) Article 13 of Chapter 1 of Title 7, the 'Georgia Residential Mortgage Act';

9 (D) Chapter 3 of Title 7, the 'Georgia Industrial Loan Act'; or

10 (E) Chapter 5 of Title 7, 'The Credit Card and Credit Card Bank Act'; or

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

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

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

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

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

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

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

23 (3) Any other element introduced to disguise the true nature of the transaction as an
24 extension of credit; or

25 (4) Any arrangement by which a de facto lender purports to act as the agent for an
26 exempt entity. A purported agent shall be considered a de facto lender if the entire
27 circumstances of the transaction show that the purported agent holds, acquires, or
28 maintains a predominant economic interest in the loan.

29 (c) Any person who violates this Code section shall be guilty of a misdemeanor. Upon the
30 conviction of a third or subsequent offense any person shall be guilty of a felony and
31 punished by imprisonment for not less than one nor more than ten years or by a fine not to
32 exceed \$1,000.00 for each proven unlawful loan transaction which is a part of the offense
33 or by both such imprisonment and fine.

34 16-7-3.

35 Any person who violates Code Section 16-7-2 shall be liable to the borrower in each
36 unlawful transaction for three times the amount of any interest or other charges to the

1 borrower. A civil action under this Code section may be brought on behalf of an individual
2 borrower or on behalf of an ascertainable class of borrowers.

3 16-7-4.

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

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

12 16-7-5.

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (2) If the state does not proceed with an action under this Code section, the person
33 bringing the action or settling the claim shall receive an amount which the court decides
34 is reasonable for collecting the civil penalty. The amount shall be not less than 25
35 percent and not more than 30 percent of the proceeds of the action or settlement and shall
36 be paid out of such proceeds. Such person shall also receive an amount for reasonable
37 expenses which the court finds to have been necessarily incurred, plus reasonable

- 1 attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the
2 defendant.
- 3 (d) In no event may a person bring an action under subsection (b) which is based upon
4 allegations or transactions which are the subject of a civil suit or an administrative civil
5 money penalty proceeding in which the state is already a party.
- 6 (e) The state is not liable for expenses which a person incurs in bringing an action under
7 this Code section.

8 16-7-6.

- 9 (a) There is imposed a state tax on all loans made in violation of this chapter. Such tax
10 shall be administered and collected in connection with the Georgia income taxation of the
11 person making such loans and shall be in addition to any other tax liability of such person.
- 12 (b) The tax imposed by this Code section shall be at the rate of 50 percent of all proceeds
13 received by a person from loans made in violation of this Code section.
- 14 (c) A person making loans in violation of this Code section shall declare and return the
15 proceeds subject to taxation under this Code section as a part of such person's Georgia
16 income tax return.
- 17 (d) The state revenue commissioner shall retain returns under this Code section apart from
18 all other returns and shall not disclose any part of such a return for any purpose other than
19 the collection of tax owed or a criminal prosecution involving tax matters. In a criminal
20 proceeding under this chapter, a person's return of proceeds under this Code section and
21 any evidence derived as a result of such return shall not be admissible."

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.