

House Bill 808

By: Representatives Mangham of the 94th, Fludd of the 66th, Watson of the 91st, Stephenson of the 92nd, Sinkfield of the 60th, and others

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 enact a new chapter, the "Georgia Predatory Lending Prevention Act"; to provide a
3 short title; to provide for legislative findings; to provide for definitions relating to predatory
4 lending; to list prohibited practices; to provide for severability; to provide for an effective
5 date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is
9 amended by enacting a new chapter, the "Georgia Predatory Lending Prevention Act", to
10 read as follows:

11 **"CHAPTER 6B**

12 7-6B-1.

13 This Act shall be known and may be cited as the 'Georgia Predatory Lending Prevention
14 Act.'

15 7-6B-2.

16 (a) The General Assembly finds that:

17 (1) A dramatic increase in the practice of subprime lending has occurred in the state.
18 Nationally, subprime lending grew 900 percent from 1993 to 1999 and a similar trend
19 occurred in Georgia;

20 (2) Subprime loans are intended for people who, because of blemished credit, are unable
21 to obtain conventional prime loans at standard mortgage rates;

22 (3) While subprime lending is a legitimate practice, expanding access to credit for home
23 ownership, most predatory practices occur in the subprime lending market;

1 (4) Predatory lenders tend to target groups that can least afford to be stripped of their
2 assets including lower income families, minorities, and elderly citizens; and

3 (5) The state of Georgia must act to protect its residents from these most abusive loan
4 practices.

5 (b) This law is enacted to protect the equity and property of homeowners, provide needed
6 consumer protections, and safeguard the economic vitality of our state.

7 7-6B-3.

8 (a) As used in this Code section, the term:

9 (1) 'Annual percentage rate' means the annual percentage rate for a loan, calculated
10 according to the provisions of the federal Truth In Lending Act, 15 U.S.C. Section 1601,
11 et seq., and the regulations promulgated thereunder by the Board of Governors of the
12 Federal Reserve System.

13 (2) 'Borrower' means any individual obligated to repay the loan including a coborrower,
14 cosigner, or guarantor.

15 (3) 'Flipping' means knowingly refinancing an existing home loan when any of the
16 following occurs:

17 (A) More than 50 percent of the prior debt refinanced bears a lower interest rate than
18 the new loan;

19 (B) It will take more than five years of reduced interest rate payments for the borrower
20 to recoup the transaction's prepaid finance charges and closing costs; or

21 (C) Refinancing a special mortgage originated, subsidized or guaranteed by or through
22 a state, tribal or local government, or nonprofit organization, which either bears a
23 below-market interest rate or has nonstandard payment terms beneficial to the
24 borrower, such as payments that vary with income or are limited to a percentage of
25 income, or where no payments are required under specified conditions, and where, as
26 a result of the refinancing, the borrower will lose one or more of the benefits of the
27 special mortgage.

28 (4) 'High-cost home loan' means a home loan where:

29 (A) The total points and fees on the loan exceed 5 percent of the total loan amount; or

30 (B) The annual percentage rate of interest of the home loan equals or exceeds eight
31 percentage points over the yield on United States Treasury securities that have
32 comparable periods of maturity to the loan maturity as of the 15th day of the month
33 immediately preceding the month in which the application for credit is received by the
34 lender.

35 (5) 'Home loan' means a loan, other than a reverse mortgage transaction, where the
36 principal amount of the loan does not exceed the conforming loan size limit for a

1 single-family dwelling as established from time to time by the Federal National Mortgage
2 Association and Federal Home Loan Mortgage Corporation, and the loan is secured by
3 a mortgage or deed of trust on real estate upon which there is located or is to be located
4 a structure or structures, designed principally for occupancy of from one to four families,
5 which is or will be occupied by a borrower as the borrower's principal dwelling. Home
6 loan does not include an open-end line of credit as defined in Part 226 of Title 12 of the
7 Code of Federal Regulations.

8 (6) 'Lender' means any entity that originated or acted as a mortgage broker for more than
9 five home loans within the previous 12 months.

10 (7) 'Points and fees' means:

11 (A) All items required to be disclosed as finance charges under Sections 226.4(a) and
12 226.4(b) of Title 12 of the Code of Federal Regulations, including the Official Staff
13 Commentary, as amended from time to time, except interest;

14 (B) All compensation and fees paid to mortgage brokers in connection with the loan
15 transaction; and

16 (C) All items listed in Section 226.4(c)(7) of Title 12 of the Code of Federal
17 Regulations, only if the person originating the covered loan receives direct
18 compensation in connection with the charge.

19 (8) 'Total loan amount' means the same as in section 226.32 of Title 12 of the Code of
20 Federal Regulations.

21 7-6B-4.

22 (a) No lender shall:

23 (1) Recommend or encourage nonpayment of an existing loan or other debt prior to and
24 in connection with the closing or planned closing of a home loan that refinances all or any
25 portion of such existing loan or debt;

26 (2) Coerce, intimidate, or directly or indirectly compensate an appraiser for the purpose
27 of influencing his or her independent judgment concerning the value of real estate that
28 is to be covered by a home loan or is being offered as security according to an application
29 for a home loan; or

30 (3) Leave blanks in any loan documents to be filled in after they are signed by the
31 borrower.

32 (b) No lender shall require or allow the advance collection of a premium, on a single
33 premium basis, for any credit life, credit disability, credit unemployment, or credit property
34 insurance, or the advance collection of a fee for any debt cancellation or suspension
35 agreement or contract, in connection with any home loan, whether such premium or fee is
36 paid directly by the consumer or is financed by the consumer through such loan. For

1 purposes of this chapter, credit insurance does not include a contract issued by a
2 government agency or private mortgage insurance company to insure the lender against
3 loss caused by a mortgagor's default.

4 (c) No high-cost home loan may contain a scheduled payment that is more than twice as
5 large as the average of earlier scheduled payments during the first seven years of the loan.
6 This provision does not apply to a payment schedule that is adjusted to the seasonal or
7 irregular income of the borrower, or a bridge loan with a maturity of less than 12 months
8 that requires only payments of interest until the entire unpaid balance is due.

9 (d) No high-cost home loan shall contain a prepayment penalty of more than 3 percent of
10 the original principal amount of the note in the first year, 2 percent in the second year, 1
11 percent in the third year, or any prepayment penalty beyond the third year.

12 (e) No high-cost home loan may include payment terms under which the outstanding
13 principal balance will increase at any time over the course of the loan because the regular
14 periodic payments do not cover the full amount of interest due. This paragraph does not
15 apply to a payment schedule that is adjusted to the seasonal or irregular income of the
16 borrower.

17 (f) No high-cost home loan may contain a provision that increases the interest rate after
18 default. This provision does not apply to interest rate changes in a variable rate loan
19 otherwise consistent with the provisions of the loan documents, provided the change in the
20 interest rate is not triggered by a default or the acceleration of indebtedness.

21 (g) No high-cost home loan may include terms under which more than two periodic
22 payments required under the loan are consolidated and paid in advance from the loan
23 proceeds provided to the borrower.

24 (h) No high-cost home loan may contain a provision that permits the lender, in its sole
25 discretion, to accelerate indebtedness. This provision does not prohibit acceleration of the
26 loan in good faith due to the borrower's failure to abide by the material terms of the loan.

27 (i) Home improvement contracts. A lender may not pay a contractor under a home
28 improvement contract from the proceeds of a high-cost home loan unless the instrument
29 is payable to the borrower or jointly to the borrower and the contractor, or, at the election
30 of the borrower, through a third-party escrow agent in accordance with terms established
31 in a written agreement signed by the borrower, the lender, and the contractor prior to
32 disbursement.

33 (j) A lender may not offer a high-cost home loan while engaged in the practice of flipping.

34 (k) A lender may not charge a borrower any fees or other charges to modify, renew, extend,
35 or amend a high-cost home loan, or to defer any payment due under the terms of a
36 high-cost home loan except when the borrower is in default of the loan.

1 (l) A lender may not originate a high-cost home loan without first receiving certification
2 from a counselor approved by the United States Department of Housing and Urban
3 Development, a state housing financing agency, or the regulatory agency that has
4 jurisdiction over the lender that the borrower has received counseling on the advisability
5 of the loan transaction.

6 7-6B-5.

7 (a) This chapter may be enforced by a private cause of action.

8 (b) This chapter shall be enforced by the Attorney General and the Department of Banking
9 and Finance which shall promulgate such rules and regulations as are necessary to
10 implement and administer compliance with this chapter.

11 7-6B-6.

12 The provisions of this chapter shall be severable and if any phrase, clause, sentence, or
13 provision is declared to be invalid or is preempted by federal law or regulation, the validity
14 of the remainder of this chapter shall not be affected thereby."

15 **SECTION 2.**

16 This Act shall become effective on July 1, 2005.

17 **SECTION 3.**

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