

House Bill 420

By: Representatives Ehrhart of the 36th, Tumlin of the 38th, and Williams of the 165th

A BILL TO BE ENTITLED
AN ACT

1 To repeal and reenact Chapter 3 of Title 7 of the Official Code of Georgia Annotated,
2 relating to industrial loans, so as to add protections for consumers who are customers for
3 these loans; to provide for purposes and definitions; to provide for exemptions; to provide
4 for powers and duties of the Industrial Loan Commissioner; to provide for licensure and fees;
5 to provide for maintenance of books and records by licensees; to prohibit false advertising;
6 to provide for maximum charges; to provide for penalties; to provide for suspension or
7 revocation of license; to provide for judicial review; to provide for related matters; to provide
8 an effective date; to provide for applicability; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 3 of Title 7 of the Official Code of Georgia Annotated, relating to industrial loans,
13 is amended by repealing it in its entirety and reenacting the following:

14 "CHAPTER 3

15 7-3-1.

16 This chapter shall be known and may be cited as the 'Georgia Industrial Loan Act of 2007.'

17 7-3-2.

18 The purpose of this chapter is to authorize and provide regulation of the business of making
19 loans of \$3,000.00 or less and to bring within the regulation of this chapter and within its
20 provisions all loans of \$3,000.00 or less, whether or not made by a person organized or
21 operating under the provisions and authority of some other statute, except those persons
22 and loans expressly exempted by the terms of this chapter. Even though authorized by other
23 statutes of force, such loans and the persons making them, unless expressly exempted, shall

1 be within the operation of this chapter in accordance with its terms. In addition to the
 2 foregoing, this chapter is intended to protect the citizens of Georgia from unethical loans
 3 and practices that may cause financial ruin for the individual or his or her family.

4 7-3-3.

5 As used in this chapter, the term:

6 (1) 'Commissioner' means the ~~Industrial Loan Commissioner~~ commissioner of banking
 7 and finance.

8 (2) 'Department' means the Department of Banking and Finance.

9 ~~(2)~~(3) 'License' means a single license issued or required under this chapter.

10 ~~(3)~~(4) 'Licensee' means a person to whom one or more licenses under this chapter have
 11 been issued.

12 ~~(4)~~(5) 'Loan' means any advance of money in an amount of \$3,000.00 or less under a
 13 contract requiring repayment and any and all renewals or refinancing thereof or any part
 14 thereof.

15 ~~(5)~~(6) 'Person' means individuals, copartnerships, associations, corporations, and all
 16 other legal and commercial entities.

17 7-3-4.

18 This chapter shall apply to all persons, as defined in Code Section 7-3-3, unless expressly
 19 exempted in this chapter, engaged in the business of making loans in amounts of \$3,000.00
 20 or less. On and after May 3, 1955, no person within the operation of this chapter shall
 21 charge, contract for, or receive, directly or indirectly, on or in connection with any loan,
 22 any interest, charges, fees, compensation, or consideration which is greater than the rates
 23 for same provided in this chapter or engage in the business of making such loans of
 24 \$3,000.00 or less without a license from the ~~Commissioner~~ commissioner as provided in
 25 this chapter. Persons engaged in the business of making loans of \$3,000.00 or less who are
 26 not exempted from the operation of this chapter may engage in such business and may
 27 make such loans lawfully under this chapter provided they comply with this chapter.

28 7-3-5.

29 A loan and brokerage transaction or any other transaction by which money is paid or
 30 agreed to be paid others by the borrower in order to obtain the loan shall be subject in all
 31 respects to this chapter, if it involves a transaction of \$3,000.00 or less and is not otherwise
 32 specifically exempted by the terms of this chapter; and the interest and money paid or
 33 agreed to be paid others by the borrower in order to obtain the loan shall not exceed the

1 charges authorized by this chapter, and the application of Code Section 7-4-8 is modified
2 accordingly.

3 7-3-6.

4 This chapter shall not apply to businesses organized or operating under the authority of any
5 law of this state or of the United States relating to banks, trust companies, real estate loan
6 or mortgage companies, federal savings and loan associations, Georgia building and loan
7 associations, credit unions, and ~~pawnbrokers~~ lenders licensed under Title 44 or to the
8 transactions of such businesses, which businesses are expressly excluded from regulation
9 under this chapter and exempted from the operation of its provisions. This chapter also
10 shall not apply to the University System of Georgia or its educational units, to private
11 colleges and universities in this state and associations thereof, or to student loan
12 transactions of such educational entities, which educational entities and student loan
13 transactions thereof are expressly excluded from regulation under this chapter and
14 exempted from the operation of its provisions. It is expressly provided that no bank, trust
15 company, national bank, insurance company, or real estate loan or mortgage company
16 authorized to do business in this state shall be required to obtain a license under this
17 chapter nor shall the University System of Georgia or its educational units or private
18 colleges and universities in this state and associations thereof be required to obtain a
19 license under this chapter. It is further provided that persons making loans and charging
20 interest thereon at a rate of not more than 8 percent simple interest per annum shall not be
21 subject to this chapter or required to obtain a license under this chapter.

22 7-3-7.

23 (a) There is created the office of Industrial Loan Commissioner; and the ~~Commissioner of~~
24 ~~Insurance~~ commissioner of banking and finance of the State of Georgia is designated and
25 constituted the Industrial Loan Commissioner under this chapter and is invested with all
26 of the powers and authority provided for such ~~Commissioner~~ commissioner. In addition to
27 those powers specifically enumerated, it shall be his or her duty and authority to supervise
28 generally and to exercise regulatory powers over the making of loans of \$3,000.00 or less
29 in the State of Georgia by persons governed and regulated by this chapter.

30 (b) The ~~Commissioner~~ commissioner is granted power and authority to make all rules and
31 regulations not inconsistent with this chapter which in his or her judgment shall be
32 necessary and appropriate to accomplish the purposes and objectives of this chapter,
33 including, without limitation, the power and authority to make such rules and regulations
34 regulating and controlling the manner in which loans of \$3,000.00 or less may be made
35 under this chapter. ~~Such rules and regulations shall be promulgated pursuant to public~~

1 hearing after notice of such hearing is advertised at least once in one newspaper in Atlanta,
 2 Georgia, having general state-wide circulation not less than ten days prior to such hearing.
 3 ~~In addition, such Such rules and regulations shall be promulgated in accordance with~~
 4 ~~Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Such rules and~~
 5 ~~regulations so promulgated by the Commissioner in his discretion, consistent with the~~
 6 ~~terms of this chapter and other applicable statutes, shall have the full force and effect of~~
 7 ~~law.~~ The ~~Commissioner~~ commissioner shall have authority to designate and employ and
 8 compensate agents and employees in the manner other agents and employees are employed
 9 by his the department to assist him or her in the discharge of his or her duties under this
 10 chapter; and the ~~Commissioner~~ commissioner is authorized and empowered to delegate to
 11 an assistant or deputy authority to act in his or her place ~~and stand~~ in his or her absence or
 12 disability.

13 (c) The ~~Commissioner~~ commissioner is authorized to provide for training programs and
 14 seminars at such places, at such times, and in such manner as he or she shall deem
 15 advisable. Such programs and seminars shall be for the purpose of acquainting licensees
 16 and employees thereof with this chapter, with the rules and regulations promulgated
 17 thereunder, and with such other matters relative to the business authorized to be carried on
 18 by a licensee under this chapter as the ~~Commissioner~~ commissioner shall deem necessary.

19 7-3-8.

20 All persons engaged in the business of making loans of \$3,000.00 or less in the State of
 21 Georgia, unless expressly exempted therefrom, shall be required to obtain a license under
 22 this chapter. Application for license shall be made to the ~~Commissioner~~ commissioner in
 23 writing, under oath, on forms prescribed by the ~~Commissioner~~ commissioner and shall give
 24 the location from which the business is to be conducted and shall give the names of the
 25 persons connected with the business together with any other information required by the
 26 ~~Commissioner~~ commissioner. The application shall be accompanied by: a fee of \$250.00
 27 ~~to cover the cost of investigation of the applicant and by a license fee of \$500.00 a~~
 28 corporate surety bond in a form acceptable to the department in favor of the commissioner
 29 and executed by a corporate surety authorized to transact business in this state and
 30 approved by the department in the principal sum of \$25,000.00 per location not to exceed
 31 a total of \$250,000.00; a one-time, nonrefundable investigation fee of \$500.00 per location;
 32 and an annual licensing fee of \$1,000.00 for each location. Said license shall expire on the
 33 last day of the calendar year in which granted, subject to renewal pursuant to Code Section
 34 7-3-10. The ~~Commissioner~~ commissioner shall collect fees and costs as provided in this
 35 chapter and shall issue his or her receipt for all sums collected ~~by him~~ and periodically, not

1 less than once in each quarter of each year, at such times as may be convenient, shall pay
2 into the state treasury all sums collected ~~by him~~.

3 7-3-9.

4 (a) Upon the filing of the application and the payment of the fees provided in Code Section
5 7-3-8, the ~~Commissioner~~ commissioner shall cause an investigation to be made.
6 Notwithstanding any provision of Chapter 13 of Title 50, entitled the 'Georgia
7 Administrative Procedure Act,' to the contrary, if the ~~Commissioner~~ commissioner has any
8 doubt of the applicant meeting the standards of subsection (b) of this Code section, he or
9 she shall issue a proposed order to be effective upon a later date without a hearing, unless
10 any person subject to the order requests a hearing within ten days after receipt of the
11 proposed order. Failure to make the request shall constitute a waiver of the right to a
12 hearing pursuant to this Code section. The proposed order issued by the ~~Commissioner~~
13 commissioner shall contain or shall be accompanied by a notice of opportunity for a
14 hearing which shall clearly explain that the hearing must be requested within ten days of
15 receipt of the proposed order and notice. The proposed order and notice shall be served in
16 person by the ~~Commissioner~~ commissioner or his or her agent or by registered or certified
17 mail or statutory overnight delivery, return receipt requested. The ~~Commissioner~~
18 commissioner or such person as he or she designates shall hear evidence at such hearing
19 and the hearing shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia
20 Administrative Procedure Act.' The cost of such hearing and of recording and transcribing
21 the evidence may, in the discretion of the ~~Commissioner~~ commissioner, be charged to the
22 person seeking such license.

23 (b) If the ~~Commissioner~~ commissioner shall find that:

24 ~~(1) The the financial responsibility, character, and general fitness of the applicant are~~
25 ~~such as to command the confidence of the public and to warrant a belief that the business~~
26 ~~will not be operated unfairly or unlawfully contrary to the purposes of this chapter; and,~~

27 ~~(2) Allowing the applicant to engage in business will promote the convenience and~~
28 ~~advantage of the community in which the licensed office is to be located,~~

29 the ~~Commissioner~~ commissioner shall grant such application and issue to the applicant a
30 license which shall be authority to engage in the business of making loans pursuant to said
31 license in accordance with this chapter.

32 (c) Any demand for a hearing pursuant to this Code section shall specify in what respects
33 such person is aggrieved and the grounds to be relied upon as a basis for the relief to be
34 demanded at the hearing. Unless postponed by mutual consent, the hearing shall be held
35 within 30 days after receipt by the ~~Commissioner~~ commissioner of the demand for a
36 hearing.

1 (d) In the event any person shall purchase substantially all the assets used in a particular
 2 office of any existing licensee, the purchaser shall file an application for license; but, if the
 3 licensee selling such assets shall surrender his or her license for such location to the
 4 ~~Commissioner~~ commissioner, the purchaser shall not be required, in order to obtain a
 5 license, to show that the convenience and advantage of the community in which the
 6 licensed office will be located will be promoted by the establishment or continuance of the
 7 proposed business of making loans.

8 (e) The ~~Commissioner~~ commissioner shall grant or deny an application for a license made
 9 under this chapter within 60 days from the date of the filing of such application.

10 7-3-10.

11 (a) No more than one place of business shall be maintained under the same license, but the
 12 ~~Commissioner~~ commissioner may issue more than one license to the same licensee.

13 (b) Each such license issued shall be conspicuously displayed in the place of business for
 14 which granted and shall remain in full force and effect until surrendered, revoked, or
 15 suspended as provided by this chapter.

16 (c) Every licensee shall, on or before December 20 of each year, pay to the ~~Commissioner~~
 17 commissioner the sum of ~~\$500.00~~ \$1,000.00 for each license held by him or her as an
 18 annual license fee for the succeeding calendar year.

19 (d) If a licensee wishes to move his or her office within the county, he or she shall give the
 20 ~~Commissioner~~ commissioner written notice thereof, which notice shall specify the address
 21 or location to which the licensee desires to move and shall also set out, in such form as the
 22 ~~Commissioner~~ commissioner may require, facts and circumstances which it is contended
 23 will show that the removal to the new location will promote the convenience and advantage
 24 of that community. Thereafter, the ~~Commissioner~~ commissioner shall handle this request
 25 in the same manner in which he or she handles a new application under Code Section
 26 7-3-9, insofar as that Code section is applicable.

27 7-3-11.

28 In the event a licensee does not begin the operation of business under such license within
 29 a period of 120 days from the date of the issuance of such license or in the event a licensee,
 30 after having begun the operation of business under the license, remains inactive in such
 31 business for a period of 120 days, such license shall be subject to suspension or revocation
 32 by the ~~Commissioner~~ commissioner after notice and hearing under the procedure provided
 33 in Code Section ~~7-3-24~~ 7-3-27 for the revocation or suspension of licenses. Any order or
 34 decision of the ~~Commissioner~~ commissioner on such matter shall be subject to review as
 35 provided in Code Section ~~7-3-24~~ 7-3-27.

1 7-3-12.

2 (a) Each licensee shall keep and use in his or her business sufficient books and records to
3 enable the ~~Commissioner~~ commissioner to determine whether or not the licensee is
4 complying with this chapter or any other ~~Act~~ law under which such licensee is operating,
5 and such licensee shall preserve such record for at least four years after making the final
6 entry thereon. The renewal or refinancing of a loan shall not constitute a final entry.

7 (b) The ~~Commissioner~~ commissioner may, under rules and regulations promulgated by
8 him or her under the procedure provided in Code Section 7-3-7, require annual reports from
9 licensees to facilitate the performance of his or her duties and to regulate effectively the
10 making of loans under this chapter.

11 7-3-13.

12 No person shall advertise, display, distribute, or broadcast in any manner whatsoever any
13 false, misleading, or deceptive statement or representation with regard to the rates, terms,
14 or conditions for loans subject to this chapter.

15 7-3-14.

16 Every licensee under this chapter may loan any sum of money not exceeding \$3,000.00 for
17 a period of 36 months and 15 days or less and may charge, contract for, collect, and receive
18 interest and fees and may require the fulfillment of conditions on such loans as provided
19 in this Code section:

20 (1) INTEREST. A licensee may charge, contract for, receive, and collect interest at a rate
21 not to exceed 10 percent per annum of the face amount of the contract, whether repayable
22 in one single payment or repayable in monthly or other periodic installments. On loan
23 contracts repayable in 18 months or less, the interest may be discounted in advance; and,
24 on contracts repayable over a greater period, the interest shall be added to the principal
25 amount of the loan. On all contracts, interest or discount shall be computed
26 proportionately on equal calendar months;

27 (2) LOAN FEE. In addition thereto, a licensee may charge, contract for, receive, or collect
28 at the time the loan is made a fee in an amount not greater than 8 percent of the first
29 \$600.00 of the face amount of the contract plus 4 percent of the excess; provided,
30 however, that such fee shall not be charged or collected on that part of a loan which is
31 used to pay or apply on a prior loan or installment of a prior loan from the same licensee
32 to the same borrower made within the immediately preceding six-month period; provided,
33 however, that if the loan balance is \$300.00 or less, the said period shall be two months,
34 not six months; provided, further, that nothing contained in this paragraph and
35 paragraph (1) of this Code section shall be construed to permit charges, interest, or fees

1 of any nature whatsoever in the aggregate in excess of the charges, interest, and fees
 2 which would constitute a violation of Code Section 7-4-18 and this chapter shall in no
 3 way affect Code Section 7-4-18. If a borrower prepays his or her entire loan to a licensee
 4 and within the following 15 days makes a new loan with that licensee and if this is done
 5 within the six-month period or the two-month period above described, as may be
 6 applicable, the fee may be charged only on the excess by which the face amount of the
 7 new contract exceeds the amount which the borrower repaid to that licensee within the
 8 said 15 day period;

9 (3) ~~INSURANCE PREMIUMS. A licensee may charge and collect from the borrower~~
 10 ~~premiums actually paid or to be paid for insurance obtained for the borrower. A licensee~~
 11 ~~may accept as security on any loan or advance made under this chapter any one or any~~
 12 ~~combination of the following:~~

13 ~~(A) Insurance on tangible property against substantial risks or loss;~~

14 ~~(B) Reasonable insurance on the life and health of the principal party; or~~

15 ~~(C) Reasonable insurance against accident of the principal party;~~

16 ~~provided, however, that any such insurance shall be reasonably related to the type and~~
 17 ~~value of the property insured and to the amount and term of the loan and shall be obtained~~
 18 ~~from an insurance company authorized to conduct such business in the State of Georgia~~
 19 ~~and at rates lawfully filed by such company with the Commissioner of Insurance and~~
 20 ~~through a regular insurance agent licensed by the Commissioner of Insurance; provided,~~
 21 ~~further, the amount of life, health, or accident insurance required as security for loans~~
 22 ~~made under this chapter shall not exceed the amount of the loan, including charges, to be~~
 23 ~~secured; and the premiums on such insurance required of the principal party obligated~~
 24 ~~shall be limited to premiums reasonably based upon reliable actuarial experience and~~
 25 ~~sound insurance practice; and the Commissioner is authorized and directed to promulgate~~
 26 ~~rules and regulations to effectuate this provision in accordance with the spirit and intent~~
 27 ~~thereof. It shall be the duty of the Commissioner from time to time under the foregoing~~
 28 ~~direction, after public hearing in the manner provided in subsection (b) of Code Section~~
 29 ~~7-3-7, to determine and promulgate the rates and maximum premiums permissible to be~~
 30 ~~charged for life, health, and accident insurance required as security for a loan made under~~
 31 ~~this chapter and to make regulations incident thereto necessary to effectuate the same;~~
 32 ~~such premiums, when thus established and as changed from time to time in the manner~~
 33 ~~aforesaid, shall be the maximum effective and permissible charges under this paragraph.~~
 34 ~~Premiums paid or to be paid pursuant to the authority of this paragraph shall not~~
 35 ~~constitute interest. The insurance company in turn may pay to the party writing the~~
 36 ~~insurance policy sold in connection with the loan a fee or commission in an amount~~
 37 ~~which is reasonable in relationship to the transaction and in no event in excess of the~~

1 ~~amount of fee or commission customarily paid within the industry where comparable~~
 2 ~~insurance is sold in a transaction not involving credit, as determined by the~~
 3 ~~Commissioner. The selling of any insurance of any kind in connection with making or~~
 4 ~~collecting a loan under this chapter is prohibited;~~

5 (4) LATE CHARGE. A licensee may not charge and collect from the borrower a late or
 6 delinquent charge for ~~of \$10.00 or an amount equal to 5¢ for each \$1.00 of any~~
 7 ~~installment which is not paid within five days from the date such payment is due,~~
 8 ~~whichever is greater, provided that this late or delinquent charge shall not be collected~~
 9 ~~more than once for the same default as scheduled; and~~

10 (5) MAINTENANCE CHARGE. ~~In addition thereto, a A licensee may not contract for,~~
 11 ~~charge, receive, and or collect a maintenance charge of \$3.00 for each month in the term~~
 12 ~~of the loan contract on each loan made, whether repayable in one single payment or~~
 13 ~~repayable in weekly, monthly, or other periodic installments. Refunds of unearned~~
 14 ~~maintenance charges shall be made in accordance with the method prescribed in Code~~
 15 ~~Section 7-3-17, and such maintenance charges will be subject to paragraph (4) of this~~
 16 ~~Code section. Nothing contained in Code Section 7-4-18, as now or hereafter amended,~~
 17 ~~shall be construed to apply to this paragraph; and loans made in conformity with this~~
 18 ~~paragraph shall in no way constitute a violation of Code Section 7-4-18, as now or~~
 19 ~~hereafter amended in relation to a loan under this chapter.~~

20 7-3-15.

21 No licensee shall charge, contract for, or receive any other or further amount in connection
 22 with any loans authorized by this chapter in addition to those provided in Code Section
 23 7-3-14, except the actual lawful fees paid to a public official or agency of ~~the~~ this state for
 24 filing, recording, or, on loans over \$100.00, the amount of the lawful premiums, no greater
 25 than such fees, actually paid for insurance against the risk of nonrecording or releasing any
 26 instrument securing the loan; the court costs and attorney fees authorized by law incurred
 27 in the collection of any contract in default; and the actual and reasonable expenses of
 28 repossessing, storing, and selling any collateral pledged as security for any contract in
 29 default. No licensee shall divide into separate parts any contract for the purpose or with the
 30 effect of obtaining charges in excess of those authorized by this chapter.

31 7-3-16.

32 No loan shall be made by any licensee for the purpose of paying all or any part of the
 33 amount owed on any note, bill of sale to secure debt, title retention contract, conditional
 34 sales contract, or any other similar contract which has been purchased by or assigned or

1 transferred to such licensee for a period of at least 90 days from the date of such purchase
2 or transfer.

3 7-3-17.

4 Notwithstanding the provisions of any contract to the contrary, a borrower may at any time
5 prepay all or any part of the unpaid balance to become payable under any installment
6 contract. If the borrower pays the time balance in full before maturity, the licensee shall
7 refund to him or her a portion of the prepaid interest, calculated in complete even months
8 (odd days omitted), as follows: The amount of the refund shall represent at least as great
9 a proportion of the total interest as the sum of the periodical time balance after the date of
10 prepayment bears to the sum of all periodical time balances under the schedule of payments
11 in the original contract. Where the amount of the refund due to anticipation of payment is
12 less than \$1.00, no refund need be made. ~~If the borrower has been required to purchase
13 other than insurance coverage in a blanket policy when he has paid no acquisition cost, he
14 shall have the option to continue such insurance in force for the balance of the policy
15 period, with all rights transferred to the borrower or his assigns, in which event no refund
16 of insurance premiums shall be made to him.~~

17 7-3-18.

18 At the time the loan is made, each licensee under this chapter shall deliver to the borrower
19 or, if there are two or more, to one of them a copy of the loan contract or a written itemized
20 statement in the English language showing in clear terms the date and amount of the loan,
21 a schedule of the payments or a description thereof, ~~the type of security for the loan;~~ the
22 licensee's name and address, the actual cash advanced to or on behalf of the borrower, ~~the
23 amount of each class of insurance carried and the premiums paid thereon;~~ and the amount
24 of interest and fees. Each licensee shall give a receipt for every cash payment made.

25 7-3-19.

26 (a) A person licensed pursuant to this chapter shall:

27 (1) Display in a conspicuous location in each place of business the name and toll-free
28 telephone number of a consumer credit counseling service organization;

29 (2) Post in each place of business a notice of the charges imposed for such loans; and

30 (3) Provide the following notice in a prominent place on each loan contract in at least
31 12-point boldface type: 'You have the right to rescind this contract on or before the close
32 of the next business day following this transaction.'

33 (b) The loan contract or written agreement shall not contain any of the following
34 provisions: a hold harmless clause; a confession of judgment clause; a mandatory

1 arbitration clause that does not comply with the standards set forth in the statement of
 2 principles of the National Consumer Dispute Advisory Committee of the American
 3 Arbitration Association in effect on July 1, 2007; any provision in which the consumer
 4 agrees not to assert a claim or defense arising out of the contract; any assignment of or
 5 order for payment of wages or other compensation for services; or any waiver by the
 6 consumer of any provision of this chapter.

7 (c) A borrower shall have the right to rescind, at no cost, the loan agreement on or before
 8 the close of the next business day following the transaction. In order to rescind the loan
 9 agreement, a consumer need only inform the licensee of the consumer's desire to rescind
 10 and return to the licensee the instrument that was issued to the consumer or cash in the
 11 amount equal to the amount financed.

12 7-3-20.

13 A person licensed pursuant to this chapter shall not:

14 (1) Require a consumer to provide security for the transaction or require the consumer
 15 to provide guaranty from another person;

16 (2) Allow any consumer to have multiple loans from the same licensee;

17 (3) Use any device, plan, or agreement, including agreements with affiliated licensees,
 18 or use any agreements with check cashers, either formal or informal, with the intent to
 19 obtain greater charges than otherwise would be authorized by this chapter. Such
 20 prohibition shall include, but not be limited to, any fee to cash a check given to a
 21 consumer by a licensee;

22 (4) Charge any fees not specifically authorized in this chapter;

23 (5) Except as specifically authorized under this chapter, use or threaten to use the
 24 criminal process available under Code Section 16-9-20 to collect on a loan contract or
 25 any civil process to collect the payment on a loan contract not generally available to
 26 creditors to collect on consumer loans in default;

27 (6) Allow a consumer to renew or refinance a loan agreement by paying only an
 28 additional fee to extend the due date of the existing agreement or contract; or

29 (7) Knowingly offer or provide a loan or cash advance of any kind to an active duty
 30 member of the United States military or his or her dependents.

31 7-3-21.

32 (a) A licensee must provide a consumer written notice of the borrower's right to request
 33 a repayment plan according to subsection (b) of this Code section. The form of such
 34 written notice shall be either prescribed or approved by the department and such notice
 35 shall be set forth conspicuously both at the point of sale and in every loan agreement.

1 (b) If a borrower is unable to pay any installment on the due date or the full amount owing
 2 at the end of the term under a loan agreement or contract with a licensee, then the borrower
 3 shall have the right to request in writing from such licensee a mandatory repayment plan
 4 for that installment or amount owing. The licensee shall be required to provide to such
 5 borrower such a repayment plan, subject to the terms and conditions set forth below. A
 6 borrower who has requested a repayment plan may repay the amount owed according to
 7 the following terms:

8 (1) The borrower must request the repayment plan, in writing, on or before the due date
 9 of the installment or amount owed;

10 (2) The borrower shall agree not to enter into any additional loan contracts during or for
 11 seven days following the payment plan term with any other licensee;

12 (3) The borrower shall be allowed to repay the transaction in no more than four equal
 13 installments with one installment due on each of the borrower's next four pay dates;

14 (4) All other installments due under the contract shall be deferred during the term of the
 15 repayment plan and the remaining installments rescheduled accordingly; and

16 (5) The licensee shall not charge a borrower any additional fee for utilizing the
 17 mandatory repayment plan.

18 ~~7-3-19~~ 7-3-22.

19 (a) In addition to all other taxes, fees, license fees, or other charges now or hereafter levied
 20 or assessed, there is levied a tax of 3 percent on the total amount of interest on any loan
 21 collected by any person licensed under this chapter from any borrower to whom such
 22 licensee has made a loan.

23 (b) Said tax is levied and assessed against the person so licensed and shall be paid by such
 24 person and shall not be added in any manner as an additional fee or charge against the
 25 borrower. Any person licensed under this chapter who adds such tax in any manner as an
 26 additional fee or charge against the borrower shall be liable for the recovery of triple the
 27 amount of such charge by action against the lender in any court of competent jurisdiction.

28 (c) As used in this Code section, the term 'interest collected' means the gross amount of
 29 interest charged and collected on loan contracts, less any amount of unearned interest
 30 refunded to borrowers and such interest on such portion of uncollectable accounts that are
 31 charged off as bad debts by the licensee; except that, for those licensees whose records are
 32 kept on an accrual basis, the 3 percent tax levied in subsection (a) of this Code section shall
 33 be remitted on such portion of the interest as accrues during the taxable month.

1 ~~7-3-20~~ 7-3-23.

2 The tax provided for in Code Section ~~7-3-19~~ 7-3-22 shall be remitted to the ~~Commissioner~~
3 commissioner on or before the twentieth day of each month for the preceding calendar
4 month. The ~~Commissioner~~ commissioner and his or her authorized agents and employees
5 shall have the right to inspect all records of any person so licensed, and the ~~Commissioner~~
6 commissioner is authorized to promulgate rules and regulations relative to the enforcement
7 of Code Section ~~7-3-19~~ 7-3-22, this Code section, and Code Section ~~7-3-21~~ 7-3-24.

8 ~~7-3-21~~ 7-3-24.

9 In the event any person fails or refuses to remit the tax required by Code Sections ~~7-3-19~~
10 ~~and 7-3-20~~ 7-3-22 and 7-3-23 within the time prescribed, there shall be added to the tax a
11 penalty equivalent to 25 percent of the tax but in no case shall the penalty so added be less
12 than \$5.00. In the event any person fraudulently remits the incorrect tax, there shall be
13 added to the tax a penalty equivalent to 50 percent of the tax but in no case shall the penalty
14 so added be less than \$5.00. The amounts so added as penalties shall be collected as a part
15 of the tax.

16 ~~7-3-22~~ 7-3-25.

17 (a) For the purpose of discovering violations of this chapter, the ~~Commissioner~~
18 commissioner or his or her duly authorized representative may from time to time examine
19 the books, accounts, papers, and records of:

20 (1) Any licensee;

21 (2) Any person who advertises for, solicits, or holds himself or herself out as willing to
22 make loans in amounts of \$3,000.00 or less; or

23 (3) Any person whom the ~~Commissioner~~ commissioner has reason to believe is violating
24 or is about to violate the provisions of this chapter.

25 (b) The ~~Commissioner~~ commissioner may subpoena witnesses, books, accounts, papers,
26 and records; administer oaths; hold hearings; and take testimony under oath in conducting
27 examinations and hearings authorized under this chapter.

28 (c) The cost of any such examination, investigation, or hearing, in the discretion of the
29 ~~Commissioner~~ commissioner, may be charged to the licensee or person examined subject
30 to review by the superior court under Code Section ~~7-3-27~~ 7-3-30. The examinations,
31 investigations, or hearings provided for in this Code section may be conducted at the state
32 capitol or, in the discretion of the ~~Commissioner~~ commissioner, in the county wherein the
33 business of the licensee is located or where the person required to have a license under this
34 chapter is engaging in the business of making loans or elsewhere, upon the consent of the
35 parties involved.

1 ~~7-3-23~~ 7-3-26.

2 In the event the ~~Commissioner~~ commissioner shall find cause to believe that any person is
 3 violating this chapter or the rules and regulations promulgated by the ~~Commissioner~~
 4 commissioner pursuant to this chapter, ~~he~~ the commissioner shall make such investigation
 5 and have such hearings, before him or her or such person as he or she designates, as will
 6 permit him or her to determine the facts and then may issue a cease and desist order if he
 7 or she so determines. If such cease and desist order is thereafter violated by the person
 8 against whom it is issued, such violation shall constitute a public nuisance; and the
 9 ~~Commissioner~~ commissioner is authorized to seek, and the superior courts shall grant,
 10 injunctions against such person's further violating this chapter or the lawful rules and
 11 regulations promulgated by the ~~Commissioner~~ commissioner pursuant to this chapter. Such
 12 action for injunction may be maintained notwithstanding the existence of other legal
 13 remedies or the pendency or successful completion of a criminal prosecution as for a
 14 misdemeanor.

15 ~~7-3-24~~ 7-3-27.

16 (a) The ~~Commissioner~~ commissioner, upon ten days' written notice in the form of a show
 17 cause order to the licensee stating his or her contemplated action and in general the ground
 18 therefor and after giving the licensee a reasonable opportunity to be heard, subject to the
 19 right to review provided in Code Section ~~7-3-27~~ 7-3-30, may by order in writing suspend
 20 or revoke any license issued under this chapter if the ~~Commissioner~~ commissioner shall
 21 find that:

22 (1) The licensee has failed to pay the annual license fee or any fee required under this
 23 chapter; or

24 (2) The licensee has violated any provision of this chapter or any rule or regulation
 25 promulgated by the ~~Commissioner~~ commissioner under this chapter or has violated the
 26 terms of any cease or desist order entered by the ~~Commissioner~~ commissioner under
 27 Code Section ~~7-3-23~~ 7-3-26.

28 (b) Any such suspension or revocation shall not become final pending and subject to the
 29 right of review provided in Code Section ~~7-3-27~~ 7-3-30, but the court shall have and is
 30 granted power to enter such order as justice shall require pending hearing of such appeal.
 31 The court upon such appeal may tax the cost, including the cost of the hearing before the
 32 ~~Commissioner~~ commissioner, against the losing party.

33 (c) No suspension, revocation, relinquishment, or expiration of any license shall invalidate,
 34 impair, or affect the legality or obligations of any preexisting contracts or prevent the
 35 enforcement and collection thereof.

1 ~~7-3-25~~ 7-3-28.

2 (a) Any license shall be subject to suspension or revocation, after notice and hearing as
3 provided for in Code Section ~~7-3-24~~ 7-3-27, in the event unreasonable collection tactics
4 shall be willfully used by the licensee or any employee or agent thereof. Unreasonable
5 collection tactics shall include, but not be limited to, any conduct by the licensee or any
6 employee or agent thereof which:

7 (1) Causes the borrower or any member of his or her family to suffer bodily injury or
8 physical harm;

9 (2) Constitutes a willful or intentional trespass by force of the borrower's home or his
10 or her personal property without process of law;

11 (3) Holds up the borrower to public ridicule or unreasonably degrades him or her in the
12 presence of his or her neighbors or business associates;

13 (4) Involves use of printed material which simulates or resembles a summons, warrant,
14 or other legal process; or

15 (5) Although otherwise lawful, occurs at an unreasonable hour of the night. Attempts to
16 make collections by means of personal visits, telephone calls, and the like shall be
17 deemed to occur at an unreasonable hour of the night if they occur between the hours of
18 10:00 P.M. and 5:00 A.M.

19 (b) Any order or decision of the ~~Commissioner~~ commissioner on the matter of suspension
20 or revocation shall be subject to review as provided for in Code Section ~~7-3-27~~ 7-3-30.

21 ~~7-3-26~~ 7-3-29.

22 In addition to all other penalties provided for under this chapter, the ~~Commissioner~~
23 commissioner shall have authority to place any licensee on probation for a period of time
24 not to exceed one year for each and every act or violation of this chapter or of the rules and
25 regulations of the ~~Commissioner~~ commissioner and may subject such licensee to a
26 monetary penalty of up to \$1,000.00 for each and every act or violation of this chapter or
27 of the rules and regulations of the ~~Commissioner~~ commissioner. If the licensee knew or
28 reasonably should have known he or she was in violation of this chapter or the rules and
29 regulations of the ~~Commissioner~~ commissioner, the monetary penalty provided for in this
30 Code section may be increased to an amount up to \$5,000.00 for each and every act or
31 violation.

32 ~~7-3-27~~ 7-3-30.

33 The decision of the ~~Commissioner~~ commissioner in granting or refusing to grant a license
34 and in revoking or suspending such license and in any other order or decision authorized
35 in this chapter shall be final, conclusive, and binding as to all determinations of fact made

1 by him or her; but any applicant or licensee who deems himself or herself aggrieved may
2 have such decision reviewed under Chapter 13 of Title 50, the 'Georgia Administrative
3 Procedure Act,' for the review of contested cases.

4 ~~7-3-28~~ 7-3-31.

5 Nothing in this chapter shall be construed as repealing Code Section 7-4-4.

6 ~~7-3-29~~ 7-3-32.

7 (a) Any person who shall make loans under this chapter without first obtaining a license
8 or who shall make a false statement under oath in an application for a license under this
9 chapter or who shall do business while the license of such person under this chapter is
10 suspended or revoked shall be guilty of a misdemeanor; and any contract made under this
11 chapter by such person shall be null and void.

12 (b) Except as otherwise provided in this chapter, any duly licensed lender who fails to
13 comply with this chapter in connection with a loan under this chapter shall be liable to the
14 borrower or borrowers thereon for a single penalty in an amount equal to twice the amount
15 of all interest and loan fees charged said borrower or borrowers on the most recent loan
16 made by the lender to said borrower or borrowers; provided, however, that the liability
17 under this subsection shall not be less than \$100.00.

18 (c) A lender duly licensed under this chapter has no liability under subsection (b) of this
19 Code section if, within 15 days after discovering an error or violation and prior to the
20 institution of an action under this Code section or the receipt of written notice of the error
21 or violation, the lender notifies the person concerned of the error or violation and makes
22 whatever adjustments in the appropriate account are necessary to ensure that such person
23 will not be required to pay charges in excess of those permitted by this chapter.

24 (d) A lender may not be held liable in any action brought under this Code section for a
25 violation of this chapter if the lender shows by a preponderance of the evidence that the
26 violation was not intentional and resulted from a bona fide clerical or typographical error
27 notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

28 (e) A claim of violation of this chapter against a duly licensed lender may be asserted in
29 an individual action only and may not be the subject of a class action under Code Section
30 9-11-23 or any other provision of law. A claim of violation of this chapter against an
31 unlicensed lender may be asserted in a class action under Code Section 9-11-23 or any
32 other provision of law.

33 (f) If a contract is made in good faith in conformity with an interpretation of this chapter
34 by the appellate courts of this state or in a rule or regulation officially promulgated by the
35 ~~Commissioner~~ commissioner after public hearings, no provision in this Code section

1 imposing any penalty shall apply, notwithstanding that, after such contract is made, such
2 rule or regulation is amended, rescinded, or determined by judicial or other authority to be
3 invalid for any reason.

4 (g) Any lender duly licensed under this chapter who shall knowingly and willfully with
5 intent to defraud a borrower make a contract in violation of this chapter shall be guilty of
6 a misdemeanor, and the contract so made shall be null and void.

7 (h) No person may, more than one year after April 9, 1980, assert or contend offensively
8 or defensively in any court that a contract predating April 9, 1980, is null and void or is
9 illegal, void, invalid, or not good consideration for a renewal or refinanced contract. This
10 subsection is a statute of repose and limitation, barring such remedies, and only such
11 remedies, as of that date; provided, however, that after that date a borrower or borrowers
12 on a contract predating April 9, 1980, shall be entitled to the appropriate penalty provided
13 under subsections (a) through (g) of this Code section, but such right to said penalty shall
14 not in any way adversely affect the validity of any renewal or refinanced contract."

15 **SECTION 2.**

16 This Act shall become effective on July 1, 2007, and apply to all loans executed on or after
17 that date.

18 **SECTION 3.**

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