

The House Committee on Judiciary offers the following substitute to HB 64:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 13 of the Official Code of Georgia Annotated, relating to
2 contracts, so as to change provisions relating to the payment of attorney fees under certain
3 circumstances; to provide for procedure; to provide for related matters; to provide for an
4 effective date and applicability; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 SECTION 1.

7 Chapter 1 of Title 13 of the Official Code of Georgia Annotated, relating to contracts, is
8 amended by revising Code Section 13-1-11, relating to the validity and enforcement of
9 obligations to pay attorney's fees upon notes or other evidence of indebtedness, as follows:
10 "13-1-11.

11 (a) Obligations to pay attorney's fees upon any note or other evidence of indebtedness, in
12 addition to the rate of interest specified therein, shall be valid and enforceable and
13 collectable as a part of such debt if such note or other evidence of indebtedness is collected
14 by or through an attorney after maturity, subject to subsection (b) of this Code section and
15 to the following provisions:

16 (1) If such note or other evidence of indebtedness provides for attorney's fees in some
17 specific percent of the principal and interest owing thereon, such provision and obligation
18 shall be valid and enforceable up to but not in excess of 15 percent of the principal and
19 interest owing on said note or other evidence of indebtedness;

20 (2) If such note or other evidence of indebtedness provides for the payment of reasonable
21 attorney's fees without specifying any specific percent, such provision shall be construed
22 to mean 15 percent of the first \$500.00 of principal and interest owing on such note or
23 other evidence of indebtedness and 10 percent of the amount of principal and interest
24 owing thereon in excess of \$500.00; and

25 (3) The holder of the note or other evidence of indebtedness or his or her attorney at law
26 shall, after maturity of the obligation, notify in writing the maker, endorser, or party

27 sought to be held on said obligation that the provisions relative to payment of attorney's
 28 fees in addition to the principal and interest shall be enforced and that such maker,
 29 endorser, or party sought to be held on said obligation has ten days from the receipt of
 30 such notice to pay the principal and interest without the attorney's fees. If the maker,
 31 endorser, or party sought to be held on any such obligation shall pay the principal and
 32 interest in full before the expiration of such time, then the obligation to pay the attorney's
 33 fees shall be void and no court shall enforce the agreement. The refusal of a debtor to
 34 accept delivery of the notice specified in this paragraph shall be the equivalent of such
 35 notice.

36 (b)(1) If, in a civil action, application of the provisions of subsection (a) of this Code
 37 section will result in an award of attorney's fees in an amount greater than \$10,000.00,
 38 the party required to pay such fees may, prior to the entry of judgment, petition the court
 39 seeking a determination as to the reasonableness of such attorney's fees.

40 (2) In response to a petition filed under paragraph (1) of this subsection, the party
 41 requesting the attorney's fees shall submit an affidavit to the court with evidence of
 42 attorney's fees, and the party required to pay such fees may respond to such affidavit.

43 (3) The court may hold a hearing to decide the matter of attorney's fees or may award
 44 attorney's fees based on the written evidence submitted to the court. The amount of
 45 attorney's fees awarded shall be an amount found by the court to be reasonable and
 46 necessary for asserting the rights of the party requesting attorney's fees.

47 (c) A civil action instituted solely for the purpose of invoking subsection (b) of this Code
 48 section shall be void ab initio.

49 ~~(b)~~(d) Obligations to pay attorney's fees contained in security deeds and bills of sale to
 50 secure debt shall be subject to this Code section where applicable."

51 **SECTION 2.**

52 This Act shall become effective on July 1, 2011, and shall apply to contracts entered on or
 53 after July 1, 2011.

54 **SECTION 3.**

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