

House Bill 950

By: Representatives Williams of the 4th, Powell of the 171st, Houston of the 170th, Rogers of the 26th, Kidd of the 141st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 7-4-18 of the Official Code of Georgia Annotated, relating to
2 criminal penalties for excessive interest rates, so as to exclude motor vehicle title loan
3 brokers from a 5 percent per month interest limit; to amend Article 3 of Chapter 12 of Title
4 44 of the Official Code of Georgia Annotated, relating to bailments, so as to remove motor
5 vehicles from the classification of pledged goods for pawn transactions and responsibilities
6 of pawn brokers; to provide for the registration of motor vehicle title loan brokers; to provide
7 for definitions; to provide for the power of the Commissioner of Insurance to regulate motor
8 vehicle title loans; to provide that motor vehicle title loans shall convert to installment loans
9 after 90 days pass without debt satisfaction; to provide for fees; to provide for remedies for
10 violation of rules governing motor vehicle title loans; to provide for procedure for the sale
11 of motor vehicles used in motor vehicle title loan transactions; to provide for requirements
12 for record keeping by motor vehicle title loan brokers; to provide for required disclosures in
13 a motor vehicle title loan transaction; to provide for rules and regulations; to amend Part 5
14 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to
15 liens of pawnbrokers, factors, bailees, acceptors, and depositories, so as to remove motor
16 vehicles from liens that are considered pawn transactions; to provide for related matters; to
17 repeal conflicting laws; and for other purposes.

18 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

19 **SECTION 1.**

20 Code Section 7-4-18 of the Official Code of Georgia Annotated, relating to criminal penalties
21 for excessive interest rates, is amended by revising subsection (a) as follows:

22 "(a) Any person, company, or corporation who shall reserve, charge, or take for any loan
23 or advance of money, or forbearance to enforce the collection of any sum of money, any
24 rate of interest greater than 5 percent per month, either directly or indirectly, by way of
25 commission for advances, discount, exchange, or the purchase of salary or wages; by
26 notarial or other fees; or by any contract, contrivance, or device whatsoever shall be guilty

27 of a misdemeanor; provided, however, that regularly licensed pawnbrokers, as defined in
 28 Code Section 44-12-130, are limited in the amount of interest they may charge only by the
 29 limitations set forth in Code Section 44-12-131 and motor vehicle title loan brokers, as
 30 defined in Code Section 44-12-140, are limited in the amount of interest they may charge
 31 only by the limitations as set forth in Code Section 44-12-144."

32 **SECTION 2.**

33 Article 3 of Chapter 12 of Title 44 of the Official Code of Georgia Annotated, relating to
 34 bailments, is amended by revising paragraph (5) of Code Section 44-12-130, relating to
 35 definitions relative to pawn brokers, as follows:

36 "(5) 'Pledged goods' means tangible personal property, not including, without limitation,
 37 all types of motor vehicles or any motor vehicle certificate of title, which property that
 38 is purchased by, deposited with, or otherwise actually delivered into the possession of a
 39 pawnbroker in connection with a pawn transaction. However, for purposes of this Code
 40 section, possession of any motor vehicle certificate of title which has come into the
 41 possession of a pawnbroker through a pawn transaction made in accordance with law
 42 shall be conclusively deemed to be possession of the motor vehicle, and the pawnbroker
 43 shall retain physical possession of the motor vehicle certificate of title for the entire
 44 length of the pawn transaction but shall not be required in any way to retain physical
 45 possession of the motor vehicle at any time. 'Pledged goods' shall not include choses in
 46 action, securities, or printed evidences of indebtedness."

47 **SECTION 3.**

48 Said article is further amended by revising subsection (a) of Code Section 44-12-131, relating
 49 to length of pawn transactions and permissible fees, as follows:

50 "(a)(1) All pawn transactions shall be for 30 day periods but may be extended or
 51 continued for additional 30 day periods.

52 ~~(2) A pawnbroker shall not lease back to the seller or pledgor any motor vehicle during~~
 53 ~~a pawn transaction or during any extension or continuation of the pawn transaction.~~

54 ~~(3) Unless otherwise agreed, a pawnbroker has upon default the right to take possession~~
 55 ~~of the motor vehicle. In taking possession, the pawnbroker or his agent may proceed~~
 56 ~~without judicial process if this can be done without breach of the peace or may proceed~~
 57 ~~by action.~~

58 ~~(4)(2)(A)~~ During the first 90 days of any pawn transaction or extension or continuation
 59 of the pawn transaction, a pawnbroker may charge for each 30 day period interest and
 60 pawnshop charges which together equal no more than 25 percent of the principal
 61 amount advanced, with a minimum charge of up to \$10.00 per 30 day period.

62 (B) On any pawn transaction which is continued or extended beyond 90 days, a
 63 pawnbroker may charge for each 30 day period interest and pawnshop charges which
 64 together equal no more than 12.5 percent of the principal amount advanced, with a
 65 minimum charge of up to \$5.00 per 30 day period.

66 ~~(C) In addition to the charges provided for in subparagraphs (A) and (B) of this~~
 67 ~~paragraph, in a pawn transaction or in any extension or continuation of a pawn~~
 68 ~~transaction involving a motor vehicle or a motor vehicle certificate of title, a~~
 69 ~~pawnbroker may charge the following:~~

70 ~~(i) A fee equal to no more than any fee imposed by the appropriate state to register~~
 71 ~~a lien upon a motor vehicle title, but only if the pawnbroker actually registers such a~~
 72 ~~lien;~~

73 ~~(ii) No more than \$5.00 per day in storage fees, but only if an actual repossession~~
 74 ~~pursuant to a default takes place on a vehicle which was not already in the~~
 75 ~~pawnbroker's possession and only for each day the pawnbroker must actually retain~~
 76 ~~possession of the motor vehicle; and~~

77 ~~(iii) A repossession fee of \$50.00 within 50 miles of the office where the pawn~~
 78 ~~originated, \$100.00 within 51 to 100 miles, \$150.00 within 101 to 300 miles and a fee~~
 79 ~~of \$250.00 beyond 300 miles, but only if an actual repossession pursuant to a default~~
 80 ~~takes place on a vehicle which was not already in the pawnbroker's possession.~~

81 ~~(D)~~(C) If a pledgor or seller requests that the pawnbroker mail or ship the pledged item
 82 to the pledgor or seller, a pawnbroker may charge a fee for the actual shipping and
 83 mailing costs, plus a handling fee equal to not more than 50 percent of the actual
 84 shipping and mailing costs.

85 ~~(E)~~(D) In the event the pledgor or seller has lost or destroyed the original pawn ticket,
 86 a pawnbroker may, at the time of redemption, charge a fee equal to not more than
 87 \$2.00.

88 ~~(5)~~(3) No other charge or fee of any kind by whatever name denominated, ~~including but~~
 89 ~~not limited to any other storage fee for a motor vehicle,~~ shall be made by a pawnbroker
 90 except as set out in paragraph ~~(4)~~(2) of this subsection.

91 ~~(6)~~(4) No fee or charge provided for in this Code section may be imposed unless a
 92 disclosure regarding that fee or charge has been properly made as provided for in Code
 93 Section 44-12-138.

94 ~~(7)~~(5)(A) Any interest, fees, or charges collected which are undisclosed, improperly
 95 disclosed, or in excess of that allowed by this subsection may be recovered by the
 96 pledgor or seller in an action at law in any superior court of appropriate jurisdiction.

97 (B) In any such action in which the pledgor or seller prevails, the court shall also award
 98 reasonable attorneys' fees, court costs, and any expenses of litigation to the pledgor or
 99 seller.

100 (C) Before filing an action under this Code section, the pledgor or seller shall provide
 101 the pawnbroker with a written notice by certified mail or statutory overnight delivery,
 102 return receipt requested, that such an action is contemplated, identifying any fees or
 103 charges which the pledgor or seller contends are undisclosed, improperly disclosed, or
 104 in excess of the fees and charges allowed by this Code section. If the court finds that
 105 during the 30 days following receipt of this notice the pawnbroker made a good faith
 106 offer to return any excess, undisclosed, or improperly disclosed charges, the court shall
 107 award reasonable attorneys' fees, court costs, and expenses of litigation to the
 108 pawnbroker.

109 (D) No action shall be brought under this Code section more than two years after the
 110 pledgor or seller knew or should have known of the excess, undisclosed, or improperly
 111 disclosed charges."

112 **SECTION 4.**

113 Said article is further amended in subsection (b) of Code Section 44-12-138, relating to
 114 disclosure tickets and statements issued by pawnbrokers, by revising paragraphs (3), (12),
 115 (13), (14), and (15), as follows:

116 ~~"(3) If the pawned item is a motor vehicle or motor vehicle certificate of title, a statement~~
 117 ~~as follows:~~

118 ~~'Failure to make your payment as described in this document can result in the loss of~~
 119 ~~your motor vehicle. The pawnbroker can also charge you certain fees if he or she~~
 120 ~~actually repossesses the motor vehicle.'~~ Reserved;

121 ~~"(12) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
 122 ~~a statement that the pawnbroker may not charge a storage fee for the motor vehicle unless~~
 123 ~~the pawnbroker repossesses the motor vehicle pursuant to a default~~ Reserved;

124 ~~(13) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
 125 ~~a statement that the pawnbroker may charge a storage fee for a repossessed motor vehicle~~
 126 ~~not to exceed \$5.00 per day, but only if the pawnbroker actually repossesses and actually~~
 127 ~~must store the motor vehicle~~ Reserved;

128 ~~(14) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
 129 ~~a statement that the pawnbroker may charge a repossession fee, not to exceed \$50.00, but~~
 130 ~~only if the pawnbroker actually repossesses the motor vehicle~~ Reserved;

131 ~~(15) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
 132 ~~a statement that the pawnbroker may charge a fee to register a lien upon the motor vehicle~~

133 ~~certificate of title, not to exceed any fee actually charged by the appropriate state to~~
 134 ~~register a lien upon a motor vehicle certificate of title, but only if the pawnbroker actually~~
 135 ~~places such a lien upon the motor vehicle certificate of title~~ Reserved;"

136 **SECTION 5.**

137 Said article is further is amended by adding a new part to read as follows:

138 "Part 6

139 44-12-140.

140 As used in this part, the term:

141 (1) 'Commissioner' means the Insurance Commissioner or his or her designated
 142 representative.

143 (2) 'Installment loan' means a loan that is repaid over time with monthly payments.

144 (3) 'Motor vehicle title loan' means any loan on the security of a motor vehicle or motor
 145 vehicle certificate of title on the condition that the motor vehicle or motor vehicle
 146 certificate of title may be redeemed or repurchased by the pledgor for a fixed price within
 147 a fixed period of time.

148 (4) 'Motor vehicle title loan broker' means any person engaged in whole or in part in the
 149 business of lending money on the security of a motor vehicle or motor vehicle certificate
 150 of title, in the business of purchasing a motor vehicle or motor vehicle certificate of title
 151 on the condition that it may be redeemed or repurchased by the seller for a fixed price
 152 within a fixed period of time, or in the business of purchasing a motor vehicle or motor
 153 vehicle certificate of title from persons or sources other than manufacturers or licensed
 154 dealers as a part of or in conjunction with motor vehicle title loans.

155 (5) 'Person' means an individual, partnership, corporation, joint venture, trust,
 156 association, or any other legal entity however organized.

157

158 44-12-141.

159 On and after August 1, 2012, it shall be prohibited for any person to issue motor vehicle
 160 title loans without first registering as a motor vehicle title loan broker as set forth in this
 161 part. All provisions within this part that relate to the registration requirements and
 162 associated duties and responsibilities of a motor vehicle title loan broker shall become
 163 effective on August 1, 2012.

164

165 44-12-142.

166 For purposes of this part, possession of any motor vehicle certificate of title which has
167 come into the possession of a motor vehicle title loan broker through a motor vehicle title
168 loan transaction made in accordance with law shall be conclusively deemed to be
169 possession of the motor vehicle, and the motor vehicle title loan broker shall retain physical
170 possession of the motor vehicle certificate of title for the entire length of the motor vehicle
171 title loan transaction but shall not be required in any way to retain physical possession of
172 the motor vehicle at any time.

173 44-12-143.

174 (a) Every motor vehicle title loan broker shall maintain records of each loan or purchase
175 for a period of not less than four years from the original transaction date, and such records
176 shall be subject to review by the Commissioner during normal operating hours and shall
177 include:

178 (1) A photocopy of the signed transaction as provided for in Code Section 44-12-144;

179 (2) If payment is made by check, the number of the check issued for the purchase price
180 or loan;

181 (3) A photocopy of the title to the motor vehicle used in the transaction;

182 (4) A photocopy of the proof obtained that the customer has at least \$1,000.00 net
183 monthly income; and

184 (5) A photocopy of the proof obtained that the customer is a resident of Georgia;

185 (b) A motor vehicle title loan broker shall not lease back to the pledgor any motor vehicle
186 during a motor vehicle title loan transaction period.

187 (c) A motor vehicle title loan broker shall not issue more than one loan on the same
188 vehicle.

189 44-12-144.

190 (a)(1) All motor vehicle title loan transactions shall be for 90 day periods and shall be
191 documented by a written agreement signed by both the motor vehicle title loan broker and
192 the pledgor. The agreement shall specify that if full payment is not received from the
193 pledgor upon expiration of 90 days, the transaction shall be converted to an installment
194 loan to be paid in full within six months. The written agreement shall also contain the
195 name of the pledgor; the transaction date; identification of the pledged or purchased
196 motor vehicle, including the make, model number, and vehicle identification number; the
197 annual percentage rate charged; and a statement of the total amount of service fees
198 charged, expressed both as a dollar amount and an annual percentage rate consistent with

199 the format and content of the federal Truth in Lending Act. In addition, the written
200 agreement shall include all disclosures required by this Code section.

201 (2) The written agreement shall not contain any of the following provisions: a hold
202 harmless clause; a confession of judgment clause; a mandatory arbitration clause that
203 does not comply with the standards set forth in the statement of principles of the National
204 Consumer Dispute Advisory Committee of the American Arbitration Association in
205 effect on July 1, 2012; or any provision in which the consumer agrees not to assert a
206 claim or defense arising out of the contract.

207 (b) A motor vehicle title loan broker may charge the following:

208 (1) During the first 90 days of any motor vehicle title loan transaction, not more than 25
209 percent of the principal amount advanced;

210 (2) After the first 90 days of any motor vehicle title loan transaction and until the date
211 of maturity for the transaction, a fixed percent of the principal amount advanced as
212 agreed upon by the parties in the transaction agreement;

213 (3) A fee equal to not more than any fee imposed by the appropriate state to register a
214 lien upon a motor vehicle title, but only if the motor vehicle title loan broker actually
215 registers such a lien;

216 (4) A fee not more than \$5.00 per day for storage, but only if an actual repossession
217 pursuant to a default takes place on a motor vehicle which was not already in the motor
218 vehicle title loan broker's possession and only for each day the motor vehicle title loan
219 broker must actually retain possession of the motor vehicle; and

220 (5) A repossession fee of \$50.00 within 50 miles of the office where the motor vehicle
221 loan transaction originated, \$100.00 within 51 to 100 miles, \$150.00 within 101 to 300
222 miles, or \$250.00 beyond 300 miles, but only if an actual repossession pursuant to a
223 default takes place on a motor vehicle which was not already in the motor vehicle title
224 loan broker's possession.

225 (c) No fee or charge provided for in this Code section may be imposed unless a disclosure
226 regarding that fee or charge has been properly made as provided for in Code Section
227 44-12-145.

228 (d)(1) Any interest, fees, or charges collected which are undisclosed, improperly
229 disclosed, or in excess of that allowed by this Code section may be recovered by the
230 pledgor in an action at law in any superior court of appropriate jurisdiction.

231 (2) In any such action in which the pledgor prevails, the court shall also award
232 reasonable attorneys' fees, court costs, and any expenses of litigation to the pledgor.

233 (3) Before filing an action under this Code section, the pledgor shall provide the motor
234 vehicle title loan broker with a written notice by certified mail or statutory overnight
235 delivery, return receipt requested, that such an action is contemplated, identifying any

236 fees or charges which the pledgor contends are undisclosed, improperly disclosed, or in
 237 excess of the fees and charges allowed by this Code section. If the court finds that during
 238 the 30 days following receipt of this notice the motor vehicle title loan broker made a
 239 good faith offer to return any excess, undisclosed, or improperly disclosed charges, the
 240 court shall award reasonable attorneys' fees, court costs, and expenses of litigation to the
 241 motor vehicle title loan broker.

242 (4) No action shall be brought under this Code section more than two years after the
 243 pledgor knew or should have known of the excess, undisclosed, or improperly disclosed
 244 charges.

245 (e) Any interest, charge, or fees contracted for or received, directly or indirectly, in excess
 246 of the amounts permitted under paragraph (1) of subsection (b) of this Code section shall
 247 be uncollectable and the motor vehicle title loan transaction shall be void.

248 44-12-145.

249 (a) In every motor vehicle title loan transaction, a motor vehicle title loan broker shall
 250 present the pledgor with a written disclosure statement in at least nine-point type containing
 251 the following information:

252 (1) The motor vehicle title loan broker's name and address;

253 (2) A statement as follows:

254 'Failure to make your payment as described in this document can result in the loss of
 255 your motor vehicle. The title loan broker can also charge you certain fees if he or she
 256 actually repossesses the motor vehicle.';

257 (3) The annual percentage rate, computed in accordance with the federal Truth in
 258 Lending Act and regulations under the federal Truth in Lending Act, for the first 90 days
 259 of the transaction, computed as if all interest and charges were considered to be interest;

260 (4) The annual percentage rate, computed in accordance with the federal Truth in
 261 Lending Act and regulations under the federal Truth in Lending Act, for the installment
 262 loan portion of the transaction, computed as if all interest and charges were considered
 263 to be interest;

264 (7) A statement in dollar amounts of how much it will cost the pledgor to redeem the
 265 motor vehicle in the first 90 day period of the transaction;

266 (8) A statement in dollar amounts of how much it will cost the pledgor to redeem the
 267 motor vehicle in any 30 day period after the first 90 day period of the motor vehicle title
 268 loan transaction, provided that all fees and charges have been kept current;

269 (9) A statement of the specific maturity date of the motor vehicle title loan transaction;

270 (10) A statement of how long, and the grace period, the motor vehicle may be redeemed
 271 after the specific maturity date and the dollar amount which will be required to redeem
 272 the motor vehicle after the specific maturity date;

273 (11) A statement that after the grace period the motor vehicle becomes the property of
 274 the motor vehicle title loan broker;

275 (12) A statement that the motor vehicle title loan broker may not charge a storage fee for
 276 the motor vehicle unless the motor vehicle title loan broker repossesses the motor vehicle
 277 pursuant to a default;

278 (13) A statement that the motor vehicle title loan broker may charge a storage fee for a
 279 repossessed motor vehicle not to exceed \$5.00 per day, but only if the motor vehicle title
 280 loan broker actually repossesses and actually must store the motor vehicle;

281 (14) A statement that the motor vehicle title loan broker may charge a repossession fee,
 282 not to exceed \$250.00, but only if the motor vehicle title loan broker actually repossesses
 283 the motor vehicle; and

284 (15) A statement that the motor vehicle title loan broker may charge a fee to register a
 285 lien upon the motor vehicle certificate of title, not to exceed any fee actually charged by
 286 the appropriate state to register a lien upon a motor vehicle certificate of title, but only
 287 if the motor vehicle title loan broker actually places such a lien upon the motor vehicle
 288 certificate of title.

289 44-12-146.

290 Unless otherwise agreed, a motor vehicle title loan broker has upon default the right to take
 291 possession of the motor vehicle for the purposes of selling the motor vehicle to satisfy the
 292 amount owed by the pledgor. In taking possession, the motor vehicle title loan broker or
 293 his or her agent may proceed without judicial process if this can be done without breach
 294 of the peace or may proceed by action. Prior to the sale of a motor vehicle to satisfy the
 295 obligation, a motor vehicle title loan broker shall obtain at least three bids for the motor
 296 vehicle. A motor vehicle title loan broker shall accept the highest bid received in order to
 297 satisfy the debt of the pledgor. If the sale results in an amount greater than that owed by
 298 the pledgor, the amount in excess of what is owed by the pledgor shall be deemed property
 299 of the pledgor.

300 44-12-147.

301 The commissioner may promulgate such rules and regulations as are reasonable and
 302 necessary to implement this part."

303

SECTION 6.

304 Part 5 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated,
305 relating to liens of pawnbrokers, factors, bailees, acceptors, and depositories, is amended in
306 subsection (b) of Code Section 44-14-403, relating to lien of pawnbroker, action for
307 interference, grace periods, and maturity dates, as follows:

308 "(b)(1) There shall be a grace period of ten calendar days on all pawn transactions. ~~On~~
309 ~~pawn transactions involving motor vehicles or motor vehicle certificates of title, the grace~~
310 ~~period shall be 30 calendar days; on all other pawn transactions the grace period shall be~~
311 ~~ten calendar days.~~ In the event that the last day of the grace period falls on a day in
312 which the pawnbroker is not open for business, the grace period shall be extended
313 through the first day following upon which the pawnbroker is open for business. The
314 pawnbroker shall not sell the pledged goods during the grace period."

315

SECTION 7.

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