

House Bill 1640

By: Representative Lim of the 99<sup>th</sup>

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 require creditors to verify a lender's ability to repay for certain loans; to amend Title  
3 10 of the Official Code of Georgia Annotated, relating to commerce and trade, so as to  
4 provide that the failure of a creditor to provide certain information in relation to the  
5 collection of a debt is an unlawful trade practice; to amend Title 11 of the Official Code of  
6 Georgia Annotated, relating to the commercial code, so as to provide that a customer is not  
7 liable for any fee a bank charges associated with an overdraft if the bank does not  
8 immediately send notification and an explanation of the fee upon its charge; to amend Title  
9 18 of the Official Code of Georgia Annotated, relating to debtor and creditor, so as to provide  
10 special rules of procedure for debt collection actions for debt incurred pursuant to revolving  
11 credit agreements; to provide for definitions; to provide for the requirements and effect of  
12 such procedure; to provide for the expiration of the statute of limitations regarding consumer  
13 debt collection actions; to provide for related matters; to provide for applicability; to repeal  
14 conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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## SECTION 1.

Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is amended by revising subsection (a) of Code Section 7-4-2, relating to legal rate of interest, maximum rate of interest generally, and certain items not considered interest, as follows:

"(a)(1)(A) The legal rate of interest shall be 7 percent per annum simple interest where the rate percent is not established by written contract. Notwithstanding the provisions of other laws to the contrary, except Code Section 7-4-18, the parties may establish by written contract any rate of interest, expressed in simple interest terms as of the date of the evidence of the indebtedness, and charges and any manner of repayment, prepayment, or, subject to the provisions of paragraph (1) of subsection (b) of this Code section, acceleration, where the principal amount involved is more than \$3,000.00 but less than \$250,000.00 or where the lender or creditor has committed to lend, advance, or forbear with respect to any loan, advance, or forbearance to enforce the collection of more than \$3,000.00 but less than \$250,000.00. Where a legal rate of interest is greater than 10 percent on principal amounts more than \$3,000.00 but less than \$250,000.00, the creditor shall verify the debtor's ability to repay the principal and interest.

(B) Where the principal amount is \$250,000.00 or more, or the lender or creditor has committed to lend, advance, or forbear with respect to any loan, advance, or forbearance to enforce the collection of \$250,000.00 or more, the parties may establish by written contract any rate of interest, expressed in simple interest terms or otherwise, and charges to be paid by the borrower or debtor.

(C) Nothing contained in this subsection shall be construed to prohibit the computation and collection of interest at a variable rate or on a negative amortization basis or on an equity participation basis or on an appreciation basis.

(2) Where the principal amount involved is \$3,000.00 or less, such rate shall not exceed 16 percent per annum simple interest on any loan, advance, or forbearance to enforce the

43 collection of any sum of money unless the loan, advance, or forbearance to enforce the  
44 collection of any sum of money is made pursuant to another law. Where such amounts  
45 are involved, the creditor shall verify the debtor's ability to repay the principal and  
46 interest.

47 (3) As used in this Code section, the term 'interest' means a charge for the use of money  
48 computed over the term of the contract at the rate stated in the contract or precomputed  
49 at a stated rate on the scheduled principal balance or computed in any other way or any  
50 other form. Principal includes such charges to which the parties may agree under  
51 paragraph (1) of this subsection. Amounts paid or contracted to be paid as either an  
52 origination fee or discount points, or both, on any loan secured by an interest in real estate  
53 shall not be considered interest and shall not be taken into consideration in the calculation  
54 of interest and shall not be subject to rebate as provided in paragraph (1) of subsection (b)  
55 of this Code section."

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## SECTION 2.

57 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is  
58 amended by adding a new paragraph to subsection (b) of Code Section 10-1-393, relating to  
59 unfair or deceptive practices in consumer transactions unlawful and examples, to read as  
60 follows:

61 “(20.1) Failure of a creditor to provide to a debtor or an attorney for a debtor the  
62 following within five business days after the initial communication with a debtor in  
63 connection with the collection of a debt, unless the following information was provided  
64 in the initial communication or the debtor has paid the debt:

65 (A) The amount of the debt;

66 (B) The name of the creditor to whom the debt is owed;

67 (C) A statement that unless the debtor, within 30 days after receipt of the notice,  
68 disputes the validity of the debt, or any portion thereof, the debt will be assumed to be  
69 valid by the creditor; and

70 (D) A statement that if the debtor notifies the creditor in writing within 30 days after  
71 receipt of this notice that the debt, or any portion thereof, is disputed, the creditor will  
72 obtain verification of the debt:"

73 **SECTION 3.**

74 Title 11 of the Official Code of Georgia Annotated, relating to the commercial code, is  
75 amended by revising subsection (b) of Code Section 11-4-401, relating to when bank may  
76 charge customer's account, as follows:

77 "(b) A customer is not liable for the amount of an overdraft if the customer neither signed  
78 the item nor benefited from the proceeds of the item. A customer is not liable for any fee  
79 the bank charges associated with the overdraft if the bank does not immediately send  
80 notification and explanation of the fee upon its charge."

81 **SECTION 4.**

82 Title 18 of the Official Code of Georgia Annotated, relating to debtor and creditor, is  
83 amended by enacting new chapters as to read follows:

84 "CHAPTER 6

85 18-6-1.

86 As used in this chapter, the term:

87 (1) 'Action' means a proceeding where the plaintiff seeks to collect a debt incurred  
88 pursuant to a revolving credit agreement.

89 (2) 'Charge-off' means the treatment of a receivable balance as a loss or expense because  
90 payment is unlikely.

91 (3) 'Debt' means any obligation or alleged obligation to pay money arising out of a  
92 transaction in which the money, personal property, insurance, or services which are the  
93 subject of the transaction are primarily for personal, family, or household purposes. Debt  
94 shall not include obligations to pay money arising out of a loan secured by real property.

95 (4) 'Original creditor' means the person or entity to which the debt was first owed.

96 (5) 'Revolving credit agreement' means an agreement pursuant to which the consumer  
97 may purchase at retail goods or services or merchandise certificates on credit from time  
98 to time and under the terms of which a finance charge is to be computed in relation to the  
99 consumer's balance from time to time.

100 18-6-2.

101 (a) In any action involving a debt, the plaintiff shall file simultaneously with the  
102 complaint, the affidavits, documentation, and certification provided for in subsections (b)  
103 through (e) of this Code section. The affidavits, documentation, and certification shall be  
104 served on the defendant with the complaint.

105 (b) The plaintiff shall file an affidavit disclosing the following information with  
106 particularity:

107 (1) The name, position, and employer of the affiant;

108 (2) The name of the current owner of the debt;

109 (3) The name of the original creditor, including the name under which the original  
110 creditor did business with the defendant, if different;

111 (4) For debt arising from a credit card sponsored or co-sponsored by a retailer, the name  
112 of the sponsoring or co-sponsoring retailer;

113 (5) The last four digits of the account numbers assigned by the original creditor;

- 114 (6) The amount and date of the defendant's last payment, if any, or that no payment has  
115 been made;
- 116 (7) The date of charge-off;
- 117 (8) The amount of the debt on the date of charge-off;
- 118 (9) For the portion of the debt incurred after the date of charge-off, an itemization of the  
119 debt broken down by principal, interest, fees, or other charges and the method of  
120 calculating such principal, interest, fees, or other charges;
- 121 (10) A chronological listing of the names of all prior owners of the debt and the date of  
122 each transfer of ownership of the debt, beginning with the original creditor; and
- 123 (11) An attestation that the affiant personally reviewed records sufficient to establish the  
124 information provided for in subsection (c) of this Code section.
- 125 (c) The plaintiff shall also file an affidavit with legible copies of the following documents:
- 126 (1) Documents establishing the existence, amount, and terms and conditions applicable  
127 to the debt, including:
- 128 (A) A document provided to the defendant before the date of charge-off demonstrating  
129 the defendant incurred the debt and the amount owed;
- 130 (B) Documents establishing the terms and conditions applicable to the debt; and
- 131 (C) The written document, if any, signed by the defendant evidencing the defendant's  
132 agreement to the terms and conditions described in the documents in subparagraph (B)  
133 of this paragraph or, if a signed copy of such document is not within the possession,  
134 custody, or control of the plaintiff, documents evidencing the defendant's acceptance  
135 of such terms and conditions, which may include the most recent monthly statement  
136 reflecting a purchase, payment, or balance transfer authorized by the defendant before  
137 the date of charge-off; and
- 138 (2) Each bill of sale, assignment, or other document evidencing the transfer of ownership  
139 of the debt, beginning with the original creditor. Such documentation must include a  
140 specific reference to the defendant or the defendant's account number.

141 (d)(1) The plaintiff shall also file an affidavit stating that the defendant's residential  
142 address has been verified within three months prior to the commencement of the action  
143 by at least one of the following methods:

144 (A) Receiving correspondence from the defendant with that return address or other  
145 verification from the defendant within the three-month period that such address is  
146 current;

147 (B) Receiving a certified mail receipt signed by the defendant with that address within  
148 the three-month period; or

149 (C) Sending a letter by first-class mail to that address for the defendant that has not  
150 been returned to sender by the postal service, and verifying the same address as current  
151 using a paid subscriber-based commercial online database and, if available, either a  
152 municipal record, such as a street list or tax records, or a state motor vehicle registry.

153 (2) The affidavit shall describe the verification methods used and the dates of the  
154 verification. If any database or municipal or state records used shows more than one  
155 address for the defendant during the last 12 months, the plaintiff shall state the basis for  
156 selecting the addresses to be used for service. Documents reflecting such verification  
157 shall be attached.

158 (e) A certification from the plaintiff or counsel for the plaintiff shall be filed, stating:

159 (1) Whether the terms and conditions applicable to the debt included a choice of law or  
160 limitations provisions, and, if so, what such provisions stated;

161 (2) The statute or other law establishing the limitations period, if any; and

162 (3) That, based on reasonable inquiry, the applicable limitations period has not expired.

163 18-6-3.

164 (a)(1) When requesting a default, or upon request of the clerk for the purpose of entering  
165 a default, counsel for the plaintiff, or in the case of a self-represented plaintiff, the  
166 plaintiff, shall sign, serve, and file an affidavit stating that:

167 (A) Such person has personally reviewed the documentation filed and served pursuant  
168 to Code Section 18-6-2;

169 (B) The documentation meets all requirements of Code Section 18-6-2, with any  
170 exceptions specifically stated; and

171 (C) The documentation establishes the plaintiff's entitlement to judgment in the amount  
172 claimed by the plaintiff.

173 (2) In entering a default, the clerk may rely upon such affidavit.

174 (3) If the plaintiff has not complied with the requirements of Code Section 18-6-2 and  
175 paragraph (1) of this subsection, the clerk shall not enter a default against the defendant  
176 and shall so notify the parties. The court shall dismiss the complaint without prejudice  
177 on or after the thirtieth day after the date of notice by the clerk unless the plaintiff shows  
178 cause, with notice to the defendant, why the complaint should not be dismissed.

179 (b)(1) No default judgment against the defendant shall be entered unless the clerk or  
180 court determines that the documentation filed and served by the plaintiff pursuant to Code  
181 Section 18-6-2 and the affidavit pursuant to paragraph (1) of subsection (a) of this Code  
182 section establish the plaintiff's entitlement to judgment in the amount claimed by the  
183 plaintiff

184 (2) In entering a default judgment, the clerk or court may rely upon the affidavit  
185 provided for in paragraph (1) of subsection (a) of this Code section.

186 CHAPTER 7

187 18-7-1.

188 (a) A creditor or a collector may not initiate a consumer debt collection action after the  
189 expiration of the statute of limitations applicable to the consumer debt collection action.

190 (b)(1) Notwithstanding any other provision of law, any payment toward, written or oral  
191 affirmation of, or any other activity on the debt that occurs after the expiration of the



192 statute of limitations applicable to the consumer debt collection action does not revive or  
193 extend the limitations period.

194 (2) This Code section shall not be interpreted to affect the statute of limitations  
195 applicable to a cause of action arising from a separate written agreement or written  
196 payment plan entered into by the debtor and the creditor or collector before the expiration  
197 of the statute of limitations applicable to the consumer debt collection action."

198 **SECTION 5.**

199 Section 4 of this Act shall apply to agreements entered into or renewed on or after July 1,  
200 2022.

201 **SECTION 6.**

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