

House Bill 801

By: Representative Ehrhart of the 36<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 3 of Title 7 of the Official Code of Georgia Annotated, relating to  
2 industrial loans, so as to provide for the regulation of consumer lawsuit lending and lenders;  
3 to provide for definitions; to provide for limitations regarding consumer lawsuit lending  
4 transactions including limitations on finance charges; to amend Article 5 of Chapter 11 of  
5 Title 9 of the Official Code of Georgia Annotated, relating to depositions and discovery, so  
6 as to provide for the service and filing of certain documents regarding consumer lawsuit  
7 lending; to provide for related matters; to provide for an effective date and applicability; to  
8 repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Chapter 3 of Title 7 of the Official Code of Georgia Annotated, relating to industrial loans,  
12 is amended by revising Code Section 7-3-2, relating to the purpose of the chapter, as follows:  
13 "7-3-2.

14 The purpose of this chapter is to authorize and provide regulation of the business of making  
15 loans of \$3,000.00 or less and consumer lawsuit loans of any amount and to bring within  
16 the regulation of this chapter and within its provisions all loans of \$3,000.00 or less and  
17 consumer lawsuit loans of any amount, whether or not made by a person organized or  
18 operating under the provisions and authority of some other statute, except those persons  
19 and loans expressly exempted by the terms of this chapter. Even though authorized by  
20 other statutes of force, such loans and the persons making them, unless expressly  
21 exempted, shall be within the operation of this chapter in accordance with its terms."

22 **SECTION 2.**

23 Said chapter is further amended by revising Code Section 7-3-3, relating to definitions, as  
24 follows:

25 "7-3-3.

26 As used in this chapter, the term:

27 (1) 'Commissioner' means the Industrial Loan Commissioner.

28 (1.1) 'Consumer' means any individual who is or may become a plaintiff, claimant, or  
 29 demandant in any dispute.

30 (1.2) 'Consumer lawsuit lender' means any person that engages in consumer lawsuit  
 31 lending.

32 (1.3) 'Consumer lawsuit lending' means the extension of consumer lawsuit loans.

33 (1.4) 'Consumer lawsuit loan' means:

34 (A) The provision of any money to any consumer to use for any purpose other than  
 35 prosecuting the consumer's dispute with the repayment of such money conditioned upon  
 36 and sourced from the consumer's proceeds of the dispute, by judgment, settlement, or  
 37 otherwise; or

38 (B) The purchase from any consumer of a contingent right to receive a share of the  
 39 potential proceeds of the consumer's dispute, by judgment, settlement, or otherwise.

40 (1.5) 'Dispute' means:

41 (A) A civil action;

42 (B) Any alternative dispute resolution proceeding; or

43 (C) Any administrative proceeding before any agency or instrumentality of the  
 44 government of this state.

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

46 (3) 'Licensee' means a person to whom one or more licenses under this chapter have been  
 47 issued.

48 (4) 'Loan' means any advance of money in an amount of \$3,000.00 or less under a  
 49 contract requiring repayment and any and all renewals or refinancing thereof or any part  
 50 thereof or any consumer lawsuit loan of any amount.

51 (5) 'Person' means individuals, copartnerships, associations, corporations, and all other  
 52 legal and commercial entities."

53 **SECTION 3.**

54 Said chapter is further amended by revising Code Section 7-3-4, relating to applicability of  
 55 the chapter generally and effect on existing lenders, as follows:

56 "7-3-4.

57 This chapter shall apply to all persons, as defined in Code Section 7-3-3, unless expressly  
 58 exempted in this chapter, engaged in the business of making loans in amounts of \$3,000.00  
 59 or less or consumer lawsuit loans of any amount. On and after May 3, 1955, no person  
 60 within the operation of this chapter shall charge, contract for, or receive, directly or

61 indirectly, on or in connection with any loan, any interest, charges, fees, compensation, or  
62 consideration which is greater than the rates for same provided in this chapter or engage  
63 in the business of making such loans of \$3,000.00 or less or consumer lawsuit loans of any  
64 amount without a license from the Commissioner as provided in this chapter. Persons  
65 engaged in the business of making loans of \$3,000.00 or less or consumer lawsuit loans of  
66 any amount who are not exempted from the operation of this chapter may engage in such  
67 business and may make such loans lawfully under this chapter provided they comply with  
68 this chapter."

69 **SECTION 4.**

70 Said chapter is further amended by revising Code Section 7-3-5, relating to applicability of  
71 the chapter to transactions by which money is paid to others, as follows:

72 "7-3-5.

73 A loan and brokerage transaction or any other transaction by which money is paid or  
74 agreed to be paid others by the borrower in order to obtain the loan shall be subject in all  
75 respects to this chapter, if it involves a transaction of \$3,000.00 or less, or a consumer  
76 lawsuit lending transaction of any amount, and is not otherwise specifically exempted by  
77 the terms of this chapter; and the interest and money paid or agreed to be paid others by the  
78 borrower in order to obtain the loan shall not exceed the charges authorized by this chapter,  
79 and the application of Code Section 7-4-8 is modified accordingly."

80 **SECTION 5.**

81 Said chapter is further amended by revising Code Section 7-3-6, relating to exemptions from  
82 the chapter, as follows:

83 "7-3-6.

84 This chapter shall not apply to businesses organized or operating under the authority of any  
85 law of this state or of the United States relating to banks, trust companies, real estate loan  
86 or mortgage companies, federal savings and loan associations, Georgia building and loan  
87 associations, credit unions, and pawnbrokers or to the transactions of such businesses,  
88 which businesses are expressly excluded from regulation under this chapter and exempted  
89 from the operation of its provisions. This chapter also shall not apply to the University  
90 System of Georgia or its educational units, to private colleges and universities in this state  
91 and associations thereof, or to student loan transactions of such educational entities, which  
92 educational entities and student loan transactions thereof are expressly excluded from  
93 regulation under this chapter and exempted from the operation of its provisions. It is  
94 expressly provided that no bank, trust company, national bank, insurance company, or real  
95 estate loan or mortgage company authorized to do business in this state shall be required

96 to obtain a license under this chapter nor shall the University System of Georgia or its  
 97 educational units or private colleges and universities in this state and associations thereof  
 98 be required to obtain a license under this chapter. It is further provided that persons  
 99 making loans and charging interest thereon at a rate of not more than 8 percent simple  
 100 interest per annum shall not be subject to this chapter or required to obtain a license under  
 101 this chapter, provided that consumer lawsuit lenders shall in all cases be required to obtain  
 102 such a license."

103 **SECTION 6.**

104 Said chapter is further amended by revising Code Section 7-3-7, relating to the Industrial  
 105 Loan Commissioner, powers and duties generally, employees, deputy, and training programs  
 106 for licensees, as follows:

107 "7-3-7.

108 (a) There is created the office of Industrial Loan Commissioner; and the Commissioner of  
 109 Insurance of the State of Georgia is designated and constituted the Industrial Loan  
 110 Commissioner under this chapter and is invested with all of the powers and authority  
 111 provided for such Commissioner. In addition to those powers specifically enumerated, it  
 112 shall be his or her duty and authority to supervise generally and to exercise regulatory  
 113 powers over the making of loans of \$3,000.00 or less or consumer lawsuit loans of any  
 114 amount in the State of Georgia by persons governed and regulated by this chapter.

115 (b) The Commissioner is granted power and authority to make all rules and regulations not  
 116 inconsistent with this chapter which in his or her judgment shall be necessary and  
 117 appropriate to accomplish the purposes and objectives of this chapter, including, without  
 118 limitation, the power and authority to make such rules and regulations regulating and  
 119 controlling the manner in which loans of \$3,000.00 or less or consumer lawsuit loans of  
 120 any amount may be made under this chapter. Such rules and regulations shall be  
 121 promulgated pursuant to public hearing after notice of such hearing is advertised at least  
 122 once in one newspaper in Atlanta, Georgia, having general state-wide circulation not less  
 123 than ten days prior to such hearing. In addition, such rules and regulations shall be  
 124 promulgated in accordance with Chapter 13 of Title 50, the 'Georgia Administrative  
 125 Procedure Act.' Such rules and regulations so promulgated by the Commissioner in his or  
 126 her discretion, consistent with the terms of this chapter and other applicable statutes, shall  
 127 have the full force and effect of law. The Commissioner shall have authority to designate  
 128 and employ and compensate agents and employees in the manner other agents and  
 129 employees are employed by his or her department to assist him or her in the discharge of  
 130 his or her duties under this chapter; and the Commissioner is authorized and empowered

131 to delegate to an assistant or deputy authority to act in his or her place and stead in his or  
132 her absence or disability.

133 (c) The Commissioner is authorized to provide for training programs and seminars at such  
134 places, at such times, and in such manner as he or she shall deem advisable. Such  
135 programs and seminars shall be for the purpose of acquainting licensees and employees  
136 thereof with this chapter, with the rules and regulations promulgated thereunder, and with  
137 such other matters relative to the business authorized to be carried on by a licensee under  
138 this chapter as the Commissioner shall deem necessary."

139 **SECTION 7.**

140 Said chapter is further amended by revising Code Section 7-3-8, relating to license required,  
141 application, and fees, as follows:

142 "7-3-8.

143 All persons engaged in the business of making loans of \$3,000.00 or less or consumer  
144 lawsuit loans of any amount in the State of Georgia, unless expressly exempted therefrom,  
145 shall be required to obtain a license under this chapter. Application for license shall be  
146 made to the Commissioner in writing, under oath, on forms prescribed by the  
147 Commissioner and shall give the location from which the business is to be conducted and  
148 shall give the names of the persons connected with the business together with any other  
149 information required by the Commissioner. The application shall be accompanied by a fee  
150 of \$250.00 to cover the cost of investigation of the applicant and by a license fee of  
151 \$500.00. Said license shall expire on the last day of the calendar year in which granted,  
152 subject to renewal pursuant to Code Section 7-3-10. The Commissioner shall collect fees  
153 and costs as provided in this chapter and shall issue his or her receipt for all sums collected  
154 by him or her and periodically, not less than once in each quarter of each year, at such  
155 times as may be convenient, shall pay into the state treasury all sums collected by him or  
156 her."

157 **SECTION 8.**

158 Said chapter is further amended by revising Code Section 7-3-14, relating to maximum loan  
159 amount, period, and charges, as follows:

160 "7-3-14.

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

165 (1) **Interest.** A licensee may charge, contract for, receive, and collect interest at a rate  
 166 not to exceed 10 percent per annum of the face amount of the contract, whether repayable  
 167 in one single payment or repayable in monthly or other periodic installments. On loan  
 168 contracts repayable in 18 months or less, the interest may be discounted in advance; and,  
 169 on contracts repayable over a greater period, the interest shall be added to the principal  
 170 amount of the loan. On all contracts, interest or discount shall be computed  
 171 proportionately on equal calendar months;

172 (2) **Loan fee.** In addition thereto, a licensee may charge, contract for, receive, or collect  
 173 at the time the loan is made a fee in an amount not greater than 8 percent of the first  
 174 \$600.00 of the face amount of the contract plus 4 percent of the excess; provided,  
 175 however, that such fee shall not be charged or collected on that part of a loan which is  
 176 used to pay or apply on a prior loan or installment of a prior loan from the same licensee  
 177 to the same borrower made within the immediately preceding six-month period; provided,  
 178 however, if the loan balance is \$300.00 or less, the said period shall be two months, not  
 179 six months; provided, further, that nothing contained in this paragraph and paragraph (1)  
 180 of this Code section shall be construed to permit charges, interest, or fees of any nature  
 181 whatsoever in the aggregate in excess of the charges, interest, and fees which would  
 182 constitute a violation of Code Section 7-4-18 and this chapter shall in no way affect Code  
 183 Section 7-4-18. If a borrower prepays his or her entire loan to a licensee and within the  
 184 following 15 days makes a new loan with that licensee and if this is done within the  
 185 six-month period or the two-month period above described, as may be applicable, the fee  
 186 may be charged only on the excess by which the face amount of the new contract exceeds  
 187 the amount which the borrower repaid to that licensee within the said 15 day period;

188 (3) **Insurance premiums.** A licensee may charge and collect from the borrower  
 189 premiums actually paid or to be paid for insurance obtained for the borrower. A licensee  
 190 may accept as security on any loan or advance made under this chapter any one or any  
 191 combination of the following:

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

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

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

195 provided, however, that any such insurance shall be reasonably related to the type and  
 196 value of the property insured and to the amount and term of the loan and shall be obtained  
 197 from an insurance company authorized to conduct such business in the State of Georgia  
 198 and at rates lawfully filed by such company with the Commissioner of Insurance and  
 199 through a regular insurance agent licensed by the Commissioner of Insurance; provided,  
 200 further, the amount of life, health, or accident insurance required as security for loans  
 201 made under this chapter shall not exceed the amount of the loan, including charges, to be

202 secured; and the premiums on such insurance required of the principal party obligated  
 203 shall be limited to premiums reasonably based upon reliable actuarial experience and  
 204 sound insurance practice; and the Commissioner is authorized and directed to promulgate  
 205 rules and regulations to effectuate this provision in accordance with the spirit and intent  
 206 thereof. It shall be the duty of the Commissioner from time to time under the foregoing  
 207 direction, after public hearing in the manner provided in subsection (b) of Code  
 208 Section 7-3-7, to determine and promulgate the rates and maximum premiums  
 209 permissible to be charged for life, health, and accident insurance required as security for  
 210 a loan made under this chapter and to make regulations incident thereto necessary to  
 211 effectuate the same; such premiums, when thus established and as changed from time to  
 212 time in the manner aforesaid, shall be the maximum effective and permissible charges  
 213 under this paragraph. Premiums paid or to be paid pursuant to the authority of this  
 214 paragraph shall not constitute interest. The insurance company in turn may pay to the  
 215 party writing the insurance policy sold in connection with the loan a fee or commission  
 216 in an amount which is reasonable in relationship to the transaction and in no event in  
 217 excess of the amount of fee or commission customarily paid within the industry where  
 218 comparable insurance is sold in a transaction not involving credit, as determined by the  
 219 Commissioner;

220 (4) **Late charge.** A licensee may charge and collect from the borrower a late or  
 221 delinquent charge of \$10.00 or an amount equal to 5¢ for each \$1.00 of any installment  
 222 which is not paid within five days from the date such payment is due, whichever is  
 223 greater, provided that this late or delinquent charge shall not be collected more than once  
 224 for the same default; and

225 (5) **Maintenance charge.** In addition thereto, a licensee may contract for, charge,  
 226 receive, and collect a maintenance charge of \$3.00 for each month in the term of the loan  
 227 contract on each loan made, whether repayable in one single payment or repayable in  
 228 weekly, monthly, or other periodic installments. Refunds of unearned maintenance  
 229 charges shall be made in accordance with the method prescribed in Code Section 7-3-17,  
 230 and such maintenance charges will be subject to paragraph (4) of this Code section.  
 231 Nothing contained in Code Section 7-4-18, as now or hereafter amended, shall be  
 232 construed to apply to this paragraph; and loans made in conformity with this paragraph  
 233 shall in no way constitute a violation of Code Section 7-4-18, as now or hereafter  
 234 amended."

235 **SECTION 9.**

236 Said chapter is further amended by revising paragraph (2) of subsection (a) of Code  
 237 Section 7-3-22, relating to examinations, investigations, and hearings, as follows:

238 "(2) Any person who advertises for, solicits, or holds himself or herself out as willing to  
 239 make loans in amounts of \$3,000.00 or less or consumer lawsuit loans of any amount; or".

240 **SECTION 10.**

241 Said chapter is further amended by adding a new Code section to read as follows:

242 "7-3-30.

243 Notwithstanding any other provision of this chapter, any amount payable to a consumer  
 244 lawsuit lender in a consumer lawsuit lending transaction that exceeds the amount provided  
 245 by the consumer lawsuit lender to the consumer shall be interest, charges, fees,  
 246 compensation, or consideration within the meaning of Code Section 7-3-4, and shall be  
 247 subject to the applicable limitations described therein."

248 **SECTION 11.**

249 Article 5 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to  
 250 depositions and discovery, is amended by adding a new Code section to read as follows:

251 "9-11-37.1.

252 In any dispute with respect to which a consumer has received money from a consumer  
 253 lawsuit lender, as each is defined in Code Section 7-3-3:

254 (1) Any and all documents that the consumer or the consumer's representative provided  
 255 to the consumer lawsuit lender shall be produced to the opposing party in the dispute  
 256 without awaiting a discovery request; and

257 (2)(A) A copy of any agreement between the consumer and a consumer lawsuit lender  
 258 shall be filed with the tribunal hearing the dispute and served on the opposing party.

259 (B) If the consumer lawsuit lending agreement is executed before the complaint or  
 260 other demand is served, the agreement shall be filed promptly upon its execution or the  
 261 filing of the complaint or demand, whichever is later, and shall be served with the  
 262 complaint or other demand as provided in Code Section 9-11-4.

263 (C) If the consumer lawsuit lending agreement is executed after the complaint or other  
 264 demand is served, the agreement shall be filed and served upon the opposing party  
 265 within ten days of its execution."

266 **SECTION 12.**

267 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 268 without such approval and shall apply to all consumer lawsuit lending transactions entered  
 269 into on and after such date and to all consumer lawsuit lenders on and after such date.



270

**SECTION 13.**

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