

Senate Bill 371

By: Senators Jeffares of the 17th, Jackson of the 2nd, Stone of the 23rd, Thompson of the 14th, Harbison of the 15th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 5 of Article 3 of Chapter 12 and Part 5 of Article 8 of Chapter 14 of Title 44
2 of the Official Code of Georgia Annotated, relating to pawnbrokers and liens by
3 pawnbrokers, factors, bailees, acceptors, and depositories, respectively, so as to provide for
4 installment pawn transactions with a fixed term for such transactions involving the pledge
5 of a motor vehicle or a motor vehicle certificate of title as security; to provide for procedures,
6 conditions, and limitations for such pawn transactions; to provide for a definition; to provide
7 for permitted charges, term length, and prepayment of such pawn transactions; to provide for
8 acceleration of such pawn transactions and permitted grace periods; to provide for related
9 matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Part 5 of Article 3 of Chapter 12 of Title 44 of the Official Code of Georgia Annotated,
13 relating to pawnbrokers, is amended in Code Section 44-12-130, relating to definitions
14 relative to pawnbrokers, by amending paragraph (1) as follows:

15 "(1) 'Installment pawn transaction' means a loan involving the pledge of a motor vehicle
16 or a motor vehicle certificate of title as security for an agreed upon number of monthly
17 periods, not to exceed 24 months, or 30 day periods, not to exceed 720 days. Except for
18 the first and the last installment amounts owed and provided that the pledgor or seller
19 makes all scheduled payments in full and on the scheduled payment dates, the agreed
20 upon installment amounts owed shall be substantially equal in amount and shall be
21 calculated in a manner that provides for the entire redemption or repurchase price and all
22 interest and pawnshop charges to be paid in full by the maturity date. Notwithstanding
23 the foregoing, the first installment period may be shorter or longer than all other
24 installment periods, provided that the first installment period shall not be less than 28
25 days and no more than 45 days from the pawn transaction date.

26 (1.1) 'Month' means that period of time from one date in a calendar month to the
 27 corresponding date in the following calendar month, but if there is no such corresponding
 28 date, then the last day of such following month."

29 **SECTION 2.**

30 Said part is further amended by revising Code Section 44-12-131, relating to duration of
 31 pawn transactions; prohibition of lease-back of motor vehicles; taking possession of motor
 32 vehicles; restrictions on interest, fees, and charges; action to recover excessive or undisclosed
 33 charges, and consequences of such charges; as follows:

34 "44-12-131.

35 (a)(1) All pawn transactions other than installment pawn transactions shall be for 30 day
 36 periods but may be extended or continued for additional 30 day periods.

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

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

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

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

52 (C)(i) For any installment pawn transaction, a pawnbroker may charge interest and
 53 pawnshop charges not to exceed the interest and pawnshop charges permitted under
 54 subparagraphs (A) and (B) of this paragraph;

55 (ii) For any installment pawn transaction, the pledgor or seller may prepay in whole
 56 or in part or redeem or repurchase the motor vehicle or motor vehicle certificate of
 57 title at any time without any prepayment penalty. The redemption or repurchase
 58 amount shall be equal to the outstanding principal balance plus interest and pawnshop
 59 charges accrued through and including the date of redemption or repurchase; and

60 (iii) The rate of interest and pawnshop charges on any installment pawn transaction
 61 shall be calculated and charged on a daily basis for the number of days outstanding

62 and assuming a year of 365 days. Interest may continue to accrue on unpaid principal
 63 balances and on past due amounts at the then applicable daily rate. Interest shall not
 64 be charged on a pre-computed or add-on basis, capitalized, compounded, or paid,
 65 deducted, or received in advance. If the maturity of the transaction is accelerated for
 66 any reason, interest may accrue on the entire balance at the then applicable daily rate.

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

71 (i) A fee equal to ~~no~~ not more than any fee imposed by the appropriate state to
 72 register a lien upon a motor vehicle title, but only if the pawnbroker actually registers
 73 such a lien;

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

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

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

86 ~~(E)~~(F) In the event the pledgor or seller has lost or destroyed the original pawn ticket,
 87 a pawnbroker may, at the time of redemption, charge a fee equal to not more than
 88 \$2.00.

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

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

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

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

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

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

113 (b) Any interest, charge, or fees contracted for or received, directly or indirectly, in excess
 114 of the amounts permitted under subsection (a) of this Code section shall be uncollectable
 115 and the pawn transaction shall be void. ~~At~~ For any pawn transaction other than an
 116 installment pawn transaction, all interest and the pawnshop ~~charge~~ charges allowed under
 117 ~~subsection subparagraphs~~ (a)(4)(A) and (a)(4)(B) of this Code section shall be deemed
 118 earned, due, and owing as of the date of the pawn transaction and a like sum shall be
 119 deemed earned, due, and owing on the same day of the succeeding month."

120 SECTION 3.

121 Said part is further amended in Code Section 44-12-138, relating to restrictions on
 122 advertising and disclosure tickets or statements, by revising subsection (b) as follows:

123 "(b) Every pawnbroker in every pawn transaction shall present the pledgor or seller with
 124 a written disclosure ticket or statement in at least nine-point type, appropriately completed,
 125 with no other written or pictorial matter except as provided in subsection (c) of this Code
 126 section, containing the following information:

127 (1) Information identifying the pawnbroker by name and address;

128 (2) A statement as follows:

129 "This is a pawn transaction. Failure to make your payments as described in this document
 130 can result in the loss of the pawned item. The pawnbroker can sell or keep the item if you
 131 have not made all payments by the specified maturity date.';

132 (3) If the pawned item is a motor vehicle or motor vehicle certificate of title, a statement
 133 as follows:

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

137 (4)(A) ~~A~~ For any pawn transaction that is not an installment pawn transaction, a
 138 statement that the length of the pawn transaction is 30 days and that it can only be
 139 renewed with the agreement of both parties and only for 30 day incremental periods;
 140 or

141 (B) For any installment pawn transaction, a description of the term and a payment
 142 schedule for the installment pawn transaction that complies with the payment schedule
 143 disclosure requirements of the federal Truth in Lending Act and regulations
 144 promulgated under the federal Truth in Lending Act;

145 (5)(A) ~~The~~ For any pawn transaction that is not an installment pawn transaction, the
 146 annual percentage rate, computed in accordance with the federal Truth in Lending Act
 147 and regulations under the federal Truth in Lending Act, for the first 30 days of the
 148 transaction, computed as if all interest and pawnshop charges were considered to be
 149 interest; or

150 (B) For any installment pawn transaction, the annual percentage rate, computed in
 151 accordance with the federal Truth in Lending Act and regulations promulgated under
 152 the federal Truth in Lending Act, computed as if all contracted for interest and
 153 pawnshop charges were considered to be interest;

154 (6) ~~The~~ For any pawn transaction that is not an installment pawn transaction, the annual
 155 percentage rate, computed in accordance with the federal Truth in Lending Act and
 156 regulations under the federal Truth in Lending Act, for each 30 day period in which the
 157 pawn transaction might be continued or extended, computed as if all interest and
 158 pawnshop charges were considered to be interest. For purposes of identifying the annual
 159 percentage rate after the second continuation or extension, a single statement which
 160 identifies an annual percentage rate for each possible 30 day period thereafter shall meet
 161 the requirements of this Code section;

162 (7) ~~A~~ For any pawn transaction that is not an installment pawn transaction, a statement
 163 in dollar amounts of how much it will cost the ~~seller or pledgor~~ pledgor or seller to
 164 redeem the merchandise in the first 30 day period of the transaction;

165 (8) ~~A~~ and a statement in dollar amounts of how much it will cost the ~~seller or pledgor~~
 166 pledgor or seller to redeem the merchandise in any 30 day period after the first 30 day
 167 period of the pawn transaction, provided that all fees and charges have been kept current;

168 (8) For any installment pawn transaction, a statement that the pledgor or seller may
 169 redeem or repurchase the motor vehicle or motor vehicle certificate of title, at any time
 170 with no prepayment penalty, for an amount equal to the then outstanding principal

- 171 balance plus interest and pawnshop charges accrued through and including the date of
 172 redemption or repurchase;
- 173 (9) A statement of the specific maturity date of the pawn transaction;
- 174 (10)(A) ~~A statement of how long;~~ For any pawn transaction that is not an installment
 175 pawn transaction, a statement of the length of the grace period, the period during which
 176 the pledged goods may be redeemed after the specific maturity date, and the dollar
 177 amount which will be required to redeem the pledged goods after the specific maturity
 178 date; or
- 179 (B) For any installment pawn transaction, a statement that the pledgor or seller has a
 180 30 day grace period following the due date for a missed or incomplete payment, during
 181 which period the pledgor or seller may redeem or repurchase the motor vehicle or
 182 motor vehicle certificate of title, and a description of the pawnbroker's right to
 183 accelerate the maturity date if the pledgor or seller fails to pay any amount owing under
 184 the pawn transaction in accordance with the payment schedule for such transaction;
- 185 (11) A statement that after the grace period expires, the pledged goods become the
 186 property of the pawnbroker;
- 187 (12) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,
 188 a statement that the pawnbroker may not charge a storage fee for the motor vehicle unless
 189 the pawnbroker repossesses the motor vehicle pursuant to a default;
- 190 (13) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,
 191 a statement that the pawnbroker may charge a storage fee for a repossessed motor vehicle
 192 not to exceed \$5.00 per day, but only if the pawnbroker actually repossesses and actually
 193 must store the motor vehicle;
- 194 (14) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,
 195 a statement that the pawnbroker may charge a repossession fee, not to exceed \$50.00, but
 196 only if the pawnbroker actually repossesses the motor vehicle;
- 197 (15) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,
 198 a statement that the pawnbroker may charge a fee to register a lien upon the motor vehicle
 199 certificate of title, not to exceed any fee actually charged by the appropriate state to
 200 register a lien upon a motor vehicle certificate of title, but only if the pawnbroker actually
 201 places such a lien upon the motor vehicle certificate of title;
- 202 (16) A statement that any costs to ship the pledged items to the pledgor or seller can be
 203 charged to the pledgor or seller, along with a handling fee to equal ~~no~~ not more than 50
 204 percent of the actual costs to ship the pledged items; and
- 205 (17) A statement that a fee of up to \$2.00 can be charged for each lost or destroyed pawn
 206 ticket."

207 **SECTION 4.**

208 Part 5 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated,
 209 relating to liens by pawnbrokers, factors, bailees, acceptors, and depositories, by revising
 210 Code Section 44-14-403, relating to pawnbroker liens, action for interference, grace period
 211 on pawn transactions, extension or continuation of maturity date, and redemption, as follows:
 212 "44-14-403.

213 (a) For purposes of this Code section, the term 'installment pawn transaction' shall have
 214 the same meaning as provided for in paragraph (1) of Code Section 44-12-130.

215 (b) A pawnbroker shall have a lien on the pledged goods pawned for the money advanced,
 216 interest, and pawnshop charge owed but not for other debts due to him or her. He or she
 217 may retain possession of the pledged goods until his or her lien is satisfied and may have
 218 a right of action against anyone interfering therewith.

219 (c) For any installment pawn transaction, where the pledgor or seller fails to pay any
 220 amount in full when it is due, the pawnbroker may accelerate the maturity date of the
 221 transaction and declare all unpaid principal and accrued interest and charges immediately
 222 due and payable. In order to exercise such acceleration rights, the pawnbroker shall have
 223 specifically contracted for such right in the applicable pawn transaction agreement or pawn
 224 ticket with the pledgor or seller and shall provide written notice of acceleration to the
 225 pledgor or seller by registered or certified mail or statutory overnight delivery to the
 226 address appearing in the pawnbroker's record book maintained in accordance with Code
 227 Section 44-12-132. Such written notice shall contain a description of the amounts owing
 228 on the pawn transaction, the redemption or repurchase price, the accelerated maturity date,
 229 which shall be the date on which the pawnbroker mails the notice of acceleration, and the
 230 date on which the grace period expires. If the pledgor or seller fails to pay any amount in
 231 full when it is due, the pawnbroker may allow the pledgor or seller to bring the delinquent
 232 account current by paying all unpaid and past due amounts of interest, charges, and
 233 principal prior to the expiration of the grace period, and if all of such amounts are paid then
 234 the pledged goods will not be forfeited as contemplated by paragraph (4) of subsection (d)
 235 of this Code section.

236 ~~(b)(1)(d)(1)(A)~~ There shall be a grace period on all pawn transactions. On pawn
 237 transactions involving motor vehicles or motor vehicle certificates of title, the grace
 238 period shall be 30 calendar days; on all other pawn transactions the grace period shall
 239 be ten calendar days.

240 (B) For any pawn transactions other than an installment pawn transaction, where the
 241 pledgor fails to redeem the property by the maturity date, the grace period shall begin
 242 running on the first day following the maturity date of the pawn transaction or on the

243 first day following the expiration of any extension or continuation of the pawn
 244 transaction, whichever occurs later.

245 (C) For any installment pawn transaction, the grace period shall begin running on the
 246 first day following the due date for a missed or incomplete payment or, if the
 247 pawnbroker exercises its right of acceleration, the accelerated maturity date.

248 (D) In the event that the last day of the grace period falls on a day in which the
 249 pawnbroker is not open for business, the grace period shall be extended through the first
 250 day following upon which the pawnbroker is open for business. The pawnbroker shall
 251 not sell the pledged goods during the grace period.

252 (2)(A) By For any pawn transaction other than an installment pawn transaction, by a
 253 written agreement of the parties, the maturity date of the pawn transaction may be
 254 extended or continued for 30 day periods, provided that the interest rates and charges
 255 as specified in Code Section 44-12-131 are not exceeded. The grace period shall begin
 256 running on the first day following the maturity date of the pawn transaction or on the
 257 first day following the expiration of any extension or continuation of the pawn
 258 transaction, whichever occurs later. All extensions or continuations of the pawn
 259 transaction shall be evidenced in writing.

260 (B) For any installment pawn transaction, parties may renew the transaction beyond
 261 the original contracted maturity date, provided that:

262 (i) Such renewal transaction shall be evidenced by a new written agreement between
 263 the parties and shall be treated as a new pawn transaction, subject to all requirements
 264 of this part applicable to new pawn transactions;

265 (ii) For a renewal transaction where the pledgor receives an additional principal
 266 amount, the pawnbroker may charge interest and pawnshop charges not to exceed the
 267 rate of interest and pawnshop charges permitted under subparagraph (a)(4)(C) of
 268 Code Section 44-12-131; or

269 (iii) For a renewal transaction where the pledgor receives no additional principal
 270 amount, the pawnbroker may charge interest and pawnshop charges not to exceed the
 271 rate of interest and pawnshop charges applicable at the time of the renewal to the
 272 installment pawn transaction.

273 (3) Pledged For any pawn transaction other than an installment pawn transaction,
 274 pledged goods may be redeemed by the pledgor or seller within the grace period by the
 275 payment of any unpaid accrued fees and charges, the repayment of the all outstanding
 276 principal, and the payment of an additional interest charge not to exceed 12.5 percent
 277 of the principal outstanding at the start of the applicable grace period. For any
 278 installment pawn transaction, goods may be redeemed by the pledgor or seller within
 279 the grace period by paying an amount equal to the outstanding principal balance plus

280 interest and pawnshop charges accrued through and including the date of redemption
 281 or repurchase.

282 (4) Pledged goods not redeemed within the grace period shall be automatically forfeited
 283 to the pawnbroker by operation of this Code section, and any ownership interest of the
 284 pledgor or seller shall automatically be extinguished as regards the pledged item.

285 ~~(4)~~(5) Any attempt to circumvent the interest rates and charges as specified in Code
 286 Section 44-12-131 shall be null and void.

287 (6) ~~A~~ For any pawn transaction other than an installment pawn transaction, such
 288 transactions shall be considered to have been extended or continued under subparagraph
 289 (d)(2)(A) of this Code section unless:

290 (A) All charges, fees, and the principal have actually been paid or repaid on the
 291 previous pawn transaction;

292 (B) The pledged goods in the previous transaction, including, but not limited to, a
 293 motor vehicle certificate of title, have actually been restored to the possession of the
 294 pledgor or seller; and

295 (C) The pledged goods in the previous transaction have been removed from the
 296 business premises of the pawnbroker and, in the case of a motor vehicle certificate of
 297 title, any lien on the motor vehicle certificate of title has been removed or released.

298 (7) Installment pawn transactions shall not be considered to be renewed except as
 299 expressly provided in subparagraph (d)(2)(B) of this Code section."

300 **SECTION 5.**

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