

Senate Bill 53

By: Senators Cheeks of the 23rd, Starr of the 44th and Crotts of the 17th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 6A of Title 7 of the Official Code of Georgia Annotated, the "Georgia
2 Fair Lending Act," so as to provide for exclusions to the definition of creditor; to exclude
3 certain fees from the definition of points and fees; to provide for liability of creditors for
4 violations of the Act; to provide for violations of the Act by brokers; to provide for related
5 matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 6A of Title 7 of the Official Code of Georgia Annotated, the "Georgia Fair Lending
9 Act," is amended by striking paragraph (7) of Code Section 7-6A-2, relating to definitions,
10 and inserting in its place the following:

11 "(7) 'Creditor' means a person who extends consumer credit that is subject to a finance
12 charge or is payable by written agreement in more than four installments ~~or a person who~~
13 ~~purchases or is assigned a home loan.~~ Creditor shall also mean any person brokering a
14 home loan, which shall include any person who directly or indirectly solicits, processes,
15 places, or negotiates home loans for others or offers to solicit, process, place, or negotiate
16 home loans for others or who closes home loans which may be in the person's own name
17 with funds provided by others and which loans are thereafter assigned to the person
18 providing the funding of such loans, provided that creditor shall not include a person who
19 is an attorney providing legal services in association with the closing of a home loan. A
20 creditor shall not include: (A) a servicer; (B) an assignee; (C) a purchaser; or (D) any
21 state or local housing finance agency or any other state or local governmental or
22 quasi-governmental entity."

23 **SECTION 2.**

24 Said chapter is further amended by striking subparagraph (G) of paragraph (13) of Code
25 Section 7-6A-2, relating to definitions, and inserting in its place the following:

1 "(G) Points and fees shall not include:

2 (i) Taxes, filing fees, recording, and other charges and fees paid or to be paid to
3 public officials for determining the existence of or for perfecting, releasing, or
4 satisfying a security interest;

5 (ii) Bona fide and reasonable fees paid to a person other than the creditor or an
6 affiliate of the creditor for the following: fees for tax payment services; fees for flood
7 certification; fees for pest infestation and flood determination; appraisal fees; fees for
8 inspections performed prior to closing; credit reports; surveys; attorneys' fees, if the
9 borrower has the right to select the attorney from an approved list or otherwise; notary
10 fees; escrow charges, so long as not otherwise included under subparagraph (A) of
11 this paragraph; title insurance premiums; and fire and hazard insurance and flood
12 insurance premiums, provided that the conditions in 12 C.F.R. 226.4(d)(2) are met;

13 (iii) Bona fide fees paid to a federal or state government agency that insures payment
14 of some portion of a home loan including, but not limited to, the Federal Housing
15 Administration, the Department of Veterans Affairs, the United States Department of
16 Agriculture for rural development loans, or the Georgia Housing and Finance
17 Authority."

18 SECTION 3.

19 Said chapter is further amended by striking Code Section 7-6A-6, relating to affirmative
20 claims against creditors, and inserting in its place the following:

21 "7-6A-6.

22 (a) Notwithstanding any other provision of law, where a home loan was made, arranged,
23 or assigned by a person selling home improvements to the dwelling of a borrower, the
24 borrower may assert against the creditor, ~~any assignee, or holder in any capacity~~ all
25 affirmative claims and any defenses that the borrower may have against the seller or home
26 improvement contractor, provided that this subsection shall not apply to loans other than
27 high-cost home loans unless applicable law requires a certificate of occupancy, inspection,
28 or completion to be obtained and said certificate is not obtained.

29 ~~(b) Notwithstanding any other provision of law, any person who purchases or is otherwise~~
30 ~~assigned a high-cost home loan shall be subject to all affirmative claims and any defenses~~
31 ~~with respect to the loan that the borrower could assert against the original creditor or~~
32 ~~creditors of the loan. Notwithstanding any other provision of law including, but not limited~~
33 ~~to any other provision of this chapter, no person other than a creditor shall be liable for any~~
34 ~~violation of this chapter.~~

35 (c) Notwithstanding any other provision of law, a borrower of a covered home loan, after
36 notice of acceleration or foreclosure of the loan or if in default more than 60 days, may

1 assert a violation of this chapter against any creditor ~~or servicer~~ by way of offset in an
2 original action, as a claim to enjoin foreclosure, as a defense or counterclaim to an action
3 to collect amounts owed, or to preserve or obtain possession of the home secured by the
4 home loan.

5 (d) It shall be a violation of this chapter for any person to attempt in bad faith to avoid the
6 application of this chapter by dividing any loan transaction into separate parts or structuring
7 a home loan transaction as an open-end loan for the purpose of evading the provisions of
8 this chapter when the loan would have been a high-cost home loan if the loan had been
9 structured as a closed-end loan or engaging in any other subterfuge with the intent of
10 evading any provision of this chapter."

11 **SECTION 4.**

12 Said chapter is further amended by striking subsection (f) of Code Section 7-6A-7, relating
13 to violation of chapter, and inserting in its place the following:

14 "(f) The brokering of a home loan by a broker registered or licensed or required to be
15 registered or licensed as a broker under the laws of this state or any other jurisdiction that
16 violates the provisions of this chapter shall constitute a violation of such provisions."

17 **SECTION 5.**

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