

Senate Bill 53

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

AS PASSED SENATE

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 changes in and exclusions from the definition of
3 creditor; to exclude certain fees from the definition of points and fees; to specify when and
4 against whom a borrower may assert claims and defenses for violations of the Act; to provide
5 for limits on liability for violations of the Act under certain circumstances; to provide for the
6 application of federal law to certain loans; to provide for related matters; to provide an
7 effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

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

1 exercising reasonable due diligence could not determine that the mortgage was a high-cost
 2 home loan. It shall be presumed that a purchaser or assignee has exercised such due
 3 diligence if the purchaser or assignee demonstrates by a preponderance of the evidence that
 4 the purchaser or assignee:

5 (1) Has in place at the time of the acquisition of the subject loans, policies that expressly
 6 prohibit its purchase or acceptance of assignment of any high-cost home loans;

7 (2) Requires by contract that a seller or assignor of the home loans to the purchaser or
 8 assignee represents and warrants to the purchaser or assignee that either (A) the seller or
 9 assignor will not sell or assign any high-cost home loans to the purchaser or assignee or
 10 (B) that such seller or assignor is the beneficiary of such a representation and warranty
 11 from a previous seller or assignor; and

12 (3) Exercises reasonable due diligence at the time of purchase or assignment of any
 13 home loans, or within a reasonable period of time from the purchase or assignment of
 14 home loans thereafter, intended to prevent the purchaser or assignee from purchasing or
 15 taking assignment of any high-cost home loans; or

16 (4) Satisfies the requirements in paragraphs (1) and (2) of this subsection and establishes
 17 that a reasonable person exercising ordinary due diligence could not determine, based on
 18 the documentation required by 15 U.S.C. Section 1601, et seq., and the itemization of the
 19 amount financed and other disclosure disbursements, that the loan was a high-cost home
 20 loan.

21 (c) Notwithstanding any other provision of law, but limited to amounts required to reduce
 22 or extinguish the borrower's liability under the home loan plus amounts required to recover
 23 costs including reasonable attorneys' fees, a borrower of a covered home loan, after notice
 24 of acceleration or foreclosure of the loan or if in default more than 60 days, may assert a
 25 violation of this chapter against any creditor or servicer by way of offset in an original
 26 action, as a claim to enjoin foreclosure, as a defense or counterclaim to an action to collect
 27 amounts owed, or to preserve or obtain possession of the home secured by the home loan
 28 acting only in an individual capacity may assert against the creditor or any subsequent
 29 holder or assignee of the covered home loan:

30 (1) Within five years of the closing of a covered home loan, a violation of this chapter
 31 in connection with the loan as an original action or as a defense, claim, or counterclaim
 32 after an action to collect on the home loan or foreclose on the collateral securing the
 33 home loan has been initiated, the debt arising from the home loan has been accelerated,
 34 or the home loan has become 60 days in default; and

35 (2) At any time during the term of a high-cost home loan, after an action to collect on the
 36 home loan or foreclose on the collateral securing the home loan has been initiated, the

1 debt arising from the home loan has been accelerated, or the home loan has become 60
 2 days in default any defense, claim, or counterclaim.

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

9 (e) Nothing in this Code section shall be construed to limit the substantive rights,
 10 remedies, or procedural rights available to a borrower against any creditor, assignee, or
 11 holder under any other law. The limitations on assignee liability in subsection (b) of this
 12 Code section shall not apply to the assignee liability in subsection (c) of this Code section."

13 SECTION 4.

14 Said chapter is further amended by adding a new Code Section 7-6A-12 to read as follows:
 15 "7-6A-12.

16 The provisions of this chapter shall not apply to any bank, trust company, savings and loan,
 17 savings bank, or credit union, respectively, that is chartered under the laws of this state or
 18 any other state only to the extent federal law precludes or preempts or has been determined
 19 to preclude or preempt the application of the provisions of this chapter to any federally
 20 chartered bank, trust company, savings and loan, savings bank, or credit union,
 21 respectively, and such federal preclusion or preemption shall apply only to the same type
 22 of state chartered entity as the federally chartered entity affected; provided, however, the
 23 provisions of this chapter, including subsection (f) of Code Section 7-6A-7, shall be
 24 applicable to an independent mortgage broker for any loan originated or brokered by the
 25 broker that is initially funded by any state or federally chartered bank, trust company,
 26 savings and loan, savings bank, or credit union."

27 SECTION 5.

28 This Act shall become effective upon its approval by the Governor or upon its becoming law
 29 without such approval.

30 SECTION 6.

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