

1 Senator Cheeks of the 23rd offered the following amendment:

2 Amend the House substitute to SB 53 by striking all matter from line 1 on page 1 through the
3 end of the bill and inserting in its place the following:

4 "To amend Chapter 6A of Title 7 of the Official Code of Georgia Annotated, the 'Georgia
5 Fair Lending Act,' so as to provide for changes in and exclusions from the definition of
6 creditor; to exclude certain fees from the definition of points and fees; to specify when and
7 against whom a borrower may assert claims and defenses for violations of the Act; to
8 provide for limits on liability for violations of the Act under certain circumstances; to
9 provide for related matters; to provide an effective date; to repeal conflicting laws; and for
10 other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

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

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

28 **SECTION 2.**

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

31 '(G) Points and fees shall not include:

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

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

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

17 SECTION 3.

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

20 '7-6A-6.

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

28 (b) Notwithstanding any other provision of law, any person who purchases or is otherwise
 29 assigned a high-cost home loan shall be subject to all affirmative claims and any defenses
 30 with respect to the loan that the borrower could assert against the original creditor or
 31 creditors of the loan, provided that this subsection shall not apply if the purchaser or
 32 assignee demonstrates by a preponderance of the evidence that a reasonable person
 33 exercising reasonable due diligence could not determine that the mortgage was a high-cost
 34 home loan. It shall be presumed that a purchaser or assignee has exercised such due
 35 diligence if the purchaser or assignee demonstrates by a preponderance of the evidence that
 36 the purchaser or assignee:

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

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

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

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

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

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

31 (2) At any time during the term of a high-cost home loan, after an action to collect on the
 32 home loan or foreclose on the collateral securing the home loan has been initiated, the
 33 debt arising from the home loan has been accelerated, or the home loan has become 60
 34 days in default any defense, claim, or counterclaim.

35 (d) It shall be a violation of this chapter for any person to attempt in bad faith to avoid the
 36 application of this chapter by dividing any loan transaction into separate parts or structuring
 37 a home loan transaction as an open-end loan for the purpose of evading the provisions of

1 this chapter when the loan would have been a high-cost home loan if the loan had been
2 structured as a closed-end loan or engaging in any other subterfuge with the intent of
3 evading any provision of this chapter.

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

8 **SECTION 4.**

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

11 **SECTION 5.**

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