

The Senate Regulated Industries and Utilities Committee offered the following substitute to SB 547:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 39A of Title 43 of the Official Code of Georgia Annotated, relating to real
2 estate appraisers, so as to provide for the recusal of board members when a conflict of
3 interest exists; to provide for circumstances for removal of board members; to provide
4 standards for offering education courses on appraising; to provide for certain conditions for
5 the investigation of appraisers; to amend Chapter 40 of Title 43 of the Official Code of
6 Georgia Annotated, relating to real estate brokers and salespersons, so as to provide for the
7 recusal of members of the Georgia Real Estate Commission; to provide for certain reasons
8 for removing a member of the Georgia Real Estate Commission; to provide for grounds for
9 denying a real estate license; to provide for the requirements for approving a license to a real
10 estate licensing school; to allow for the regulation of granting, revoking, or suspending a real
11 estate license; to provide for certain provisions relating to sanctions for violations committed
12 by licensees, schools, and instructors; to provide for certain provisions relating to
13 investigating complaints reported to the Georgia Real Estate Commission; to provide for
14 related matters; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

16 Chapter 39A of Title 43 of the Official Code of Georgia Annotated, relating to real estate
17 appraisers, is amended by striking Code Section 43-39A-3, relating to the Georgia Real
18 Estate Appraisers Board, requirements for membership, removal from the board, meetings,
19 and compensation, and inserting in its place a new Code section to read as follows:

21 "43-39A-3.

22 (a) There is created the Georgia Real Estate Appraisers Board, which shall consist of five
23 members. All members must be residents of Georgia. One member shall be a public
24 member. The public member of the board shall not be connected in any way with the
25 practice of real estate appraisal, real estate brokerage, or mortgage lending. Four members
26 shall be real estate appraisers who have been actively engaged in the real estate appraisal

1 business for at least three years. In appointing real estate appraisers to the board, while not
 2 automatically excluding other appraisers, the Governor shall give preference to real estate
 3 appraisers who do not hold an active, occupational license which authorizes their work in
 4 real estate brokerage or mortgage lending activities, who do not have a financial interest
 5 in any real estate brokerage firm or mortgage lending firm, and who are not employees of
 6 real estate brokerage firms or mortgage lending firms.

7 (b) The Governor shall appoint the members of the board, subject to confirmation by the
 8 Senate, with consideration given to appropriate geographic representation and to areas of
 9 appraisal expertise. Any such appointments made when the Senate is not in session shall
 10 be effective until acted upon by the Senate.

11 (c) A member of the board shall recuse himself or herself from voting on matters in which
 12 the member has a conflict of interest. Whenever an investigation authorized by this chapter
 13 results in the board's initiating a contested case under Chapter 13 of Title 50, the 'Georgia
 14 Administrative Procedure Act,' against a member, such member shall be recused from
 15 voting on such matter and may not discuss the matter with other board members or be
 16 present when the board discusses or votes on such matter.

17 ~~(c)~~(d) The term of each member of the board shall be five years, except that one of the
 18 successors to the two members first appointed to serve until July 1, 1992, shall be
 19 appointed to serve until July 1, 1994, and one of the successors to the two members first
 20 appointed to serve until July 1, 1993, shall be appointed to serve until July 1, 1995. In the
 21 event of a vacancy, the Governor shall appoint a person to fill such vacancy and the person
 22 so appointed shall serve for the remainder of the unexpired term.

23 ~~(d)~~(e) Upon expiration of their terms, members of the board shall continue to hold office
 24 until the appointment and qualification of their successors. The Governor, after giving
 25 notice and opportunity for a hearing, may remove from office any member of the board for
 26 any of the following:

27 (1) Inability to perform or neglecting to perform the duties required of members;

28 (2) Incompetence; or

29 (3) Dishonest conduct; or

30 (4) Having a disciplinary sanction other than a citation authorized by this chapter
 31 imposed by any professional licensing agency on such member's right to practice a trade
 32 or profession.

33 ~~(e)~~(f) The members of the board shall annually elect a chairperson from among the
 34 members to preside at board meetings.

35 ~~(f)~~(g) The board shall meet at least once each calendar quarter, or as often as is necessary,
 36 and remain in session as long as the chairperson shall deem it necessary to give full
 37 consideration to the business before the board. A quorum of the board shall be three

1 members. Members of the board or others may be designated by the chairperson of the
 2 board, in a spirit of cooperation, to confer with similar boards of other states, attend
 3 interstate meetings, and generally do such acts and things as may seem advisable to the
 4 board in the advancement of the profession and the standards of real estate appraisal
 5 activity.

6 ~~(g)~~(h) Each member of the board shall receive as compensation for each day actually spent
 7 on his or her official duties at scheduled meetings and for time actually required in
 8 traveling to and from its meetings, not to exceed one day's traveling time, the sum of
 9 \$25.00 and his or her actual and necessary expenses incurred in the performance of official
 10 duties.

11 ~~(h)~~(i) The commission shall supply staff support for the board. The commissioner shall
 12 serve as executive officer of the board. The commissioner shall be charged with the duties
 13 and powers as delegated by the board."

14 SECTION 2.

15 Said chapter is further amended by striking subsection (c) of Code Section 43-39A-8, relating
 16 to establishing appraiser classifications to comply with federal law, continuing education
 17 courses required for renewing classification, and approval of instructors, and inserting a new
 18 subsection (c) to read as follows:

19 "(c) The board, through its rules and regulations, shall establish standards for offering of
 20 all education courses required by this Code section and for the approval of schools and
 21 instructors to offer the education courses required by this chapter. Each approved school
 22 must comply with Code Sections 43-40-15 through 43-40-32. Each approved school must
 23 designate an individual approved by the board to act as its director and such designated
 24 individual shall be responsible for assuring that the approved school complies with the
 25 requirements of this chapter and rules and regulations promulgated under this chapter. No
 26 school approval shall be granted to a school unless the school authorizes its director to bind
 27 the school to any settlement of a contested case before the board as defined in Chapter 13
 28 of Title 50, the 'Georgia Administrative Procedure Act.'
 29 Violations of this chapter or its attendant rules and regulations by an approved school shall
 30 subject the school and its director to sanction as authorized by this chapter."

31 SECTION 3.

32 Said chapter is further amended by striking subsections (a) and (d) of Code Section
 33 43-39A-22, relating to investigations, subpoenas, confidentiality, access to records, and the
 34 publication of the names of disciplined appraisers and schools, and inserting in its place a
 35 new Code section to read as follows:

1 for a term of five years. Any such appointments made when the Senate is not in session
 2 shall be effective until acted upon by the Senate. Five of the members shall be licensees
 3 who shall have been residents of this state and actively engaged in the real estate business
 4 for five years. The sixth member of the commission shall have no connection with the real
 5 estate industry whatsoever but shall have a recognized interest in consumer affairs and in
 6 consumer protection concerns.

7 (b) Members of the commission shall serve until their successors are appointed and
 8 qualified. Vacancies on the commission shall be filled by appointment of a successor for
 9 the unexpired term of office by the Governor. Four members shall constitute a quorum for
 10 the transaction of any business of the commission. The commission shall organize by
 11 selecting from its members a chairperson and may do all things necessary and convenient
 12 to carry this chapter into effect. The commission shall meet at least once a month, or as
 13 often as is necessary, and remain in session as long as the chairperson thereof shall deem
 14 it necessary to give full consideration to the business before the commission. Members of
 15 the commission or others may be designated by the chairperson of the commission, in a
 16 spirit of cooperation and coordination, to confer with similar commissions of other states,
 17 attend interstate meetings, and generally do such acts and things as may seem advisable to
 18 the commission in the advancement of the profession and the standards of the real estate
 19 business.

20 (c) A member of the commission shall recuse himself or herself from voting on matters
 21 in which the member has a conflict of interest. Whenever an investigation authorized by
 22 this chapter results in the commission's initiating a contested case under Chapter 13 of
 23 Title 50, the 'Georgia Administrative Procedure Act,' against a member, such member shall
 24 be recused from voting on such matter and may not discuss such matter with other
 25 commission members or be present when the commission discusses or votes on such
 26 matter.

27 ~~(c)~~(d) The Governor, after giving notice and an opportunity for a hearing, may remove
 28 from office any member of the commission for any of the following:

- 29 (1) Inability to perform or neglecting to perform the duties required of members;
- 30 (2) Incompetence; ~~or~~
- 31 (3) Dishonest conduct; or
- 32 (4) Having a disciplinary sanction, other than a citation authorized by this chapter,
 33 imposed by any professional licensing agency on such member's right to practice a trade
 34 or profession.

35 ~~(d)~~(e) The commission is authorized to pass rules and regulations, not inconsistent with
 36 this chapter, relating to the professional conduct of licensees and the administration of this
 37 chapter.

SECTION 6.

Said chapter is further amended by striking subsection (i) of Code Section 43-40-8, relating to license requirements, and inserting in its place a new subsection (i) to read as follows:

"(i) The commission, through its rules and regulations, shall establish standards for the approval of schools and instructors to offer the education courses required by this chapter. Each approved school must comply with Code Sections 43-40-15 through 43-40-32. Each approved school must designate an individual approved by the commission to act as its director and such designated individual shall be responsible for assuring that the approved school complies with the requirements of this chapter and rules and regulations promulgated under this chapter. An approved school must authorize its director to bind the school to any settlement of a contested case before the commission as defined in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The commission, through its rules and regulations, shall establish standards for the offering of the prelicense education courses required by this chapter by methods of instruction, which it deems to be educationally sound, other than in-class instruction. The commission, through its rules and regulations, may establish standards for the offering of continuing education courses required by this chapter by methods of instruction, which it deems to be educationally sound, other than in-class instruction."

SECTION 7.

Said chapter is further amended by striking Code Section 43-40-10, relating to the granting of a real estate broker's license, associate broker's license, salesperson's license, or community association manager's license to a firm, and inserting in its place a new Code section to read as follows:

"43-40-10.

(a) No broker's license shall be granted to a firm unless:

- (1) ~~said~~ Said firm designates an individual licensed as a broker as its qualifying broker who shall be responsible for assuring that the firm and its affiliated licensees comply with the provisions of this chapter and its attendant rules and regulations; and
- (2) ~~said~~ Said firm authorizes its qualifying broker to bind the firm to any settlement of a contested case before the commission as defined in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' in which said firm may be a named respondent.

Violations of this chapter or its rules and regulations by a firm licensed as a broker shall subject the license of the qualifying broker to sanction as authorized by this chapter. No broker's license shall be granted to a firm unless every person who acts as a licensee for such firm shall hold a real estate license.

1 ~~(b) No associate broker's, salesperson's, or community association manager's license shall~~
 2 ~~be granted to a corporation, limited liability company, or partnership unless said~~
 3 ~~corporation, limited liability company, or partnership designates an individual who holds~~
 4 ~~the same type of license as its qualifying licensee who shall be responsible for assuring that~~
 5 ~~the corporation, limited liability company, or partnership complies with the provisions of~~
 6 ~~this chapter and its attendant rules and regulations. Violations of this chapter or rules and~~
 7 ~~regulations by a corporation, limited liability company, or partnership licensed as an~~
 8 ~~associate broker, salesperson, or community association manager shall subject both the~~
 9 ~~license of the entity and the license of the qualifying licensee to sanction as authorized by~~
 10 ~~this chapter. The qualifying licensee shall be the only licensee of a corporation, limited~~
 11 ~~liability company, or partnership licensed as an associate broker, salesperson, or~~
 12 ~~community association manager. The license of a corporation, limited liability company,~~
 13 ~~or partnership licensed as an associate broker, salesperson, or community association~~
 14 ~~manager must be assigned to a licensed broker. The licensed associate broker, salesperson,~~
 15 ~~community association manager, corporation, limited liability company, or partnership or~~
 16 ~~qualifying licensee may not engage in the brokerage business except in behalf of the broker~~
 17 ~~to whom its license is assigned."~~

18 **SECTION 8.**

19 Said chapter is further amended by striking paragraphs (17) and (26) of subsection (b) of
 20 Code Section 43-40-25, relating to sanctions for violations committed by licensees, schools,
 21 and instructors and unfair trade practices, and inserting in their places new paragraphs (17)
 22 and (26) to read as follows:

23 "(17) Paying a commission or compensation to any person for performing the services
 24 of a real estate licensee who has not first secured the appropriate license under this
 25 chapter or is not cooperating as a nonresident who is licensed in such nonresident's state
 26 or foreign country of residence, provided that nothing contained in this subsection or any
 27 other provision of this Code section shall be construed so as to prohibit the payment of
 28 earned commissions:

29 (A) To the estate or heirs of a deceased real estate licensee when such deceased real
 30 estate licensee had a valid Georgia real estate license in effect at the time the
 31 commission was earned and at the time of such person's death; ~~or~~

32 (B) To a citizen of another country acting as a referral agent if that country does not
 33 license real estate brokers and if the Georgia licensee paying such commission or
 34 compensation obtains and maintains reasonable written evidence that the payee is a
 35 citizen of said other country, is not a resident of this country, and is in the business of
 36 brokering real estate in said other country; or

1 (C) By the brokerage firm holding a licensee's license to an unlicensed firm in which
 2 an individual licensee affiliated with the brokerage firm owns more than a 20 percent
 3 interest provided:

4 (i) Such individual licensee earned the commission in behalf of the brokerage firm;

5 (ii) Such unlicensed firm does not perform real estate brokerage activity;

6 (iii) The affiliated licensee and the brokerage firm have a written agreement
 7 authorizing the payment to the unlicensed firm; and

8 (iv) The brokerage firm obtains and retains written evidence that the affiliated
 9 licensee owns more than a 20 percent interest in the unlicensed firm to which the
 10 compensation will be paid;"

11 "(26) Obtaining a brokerage agreement, a sales contract, or a lease from any owner,
 12 purchaser, or tenant while knowing or having reason to believe that another broker has
 13 a an exclusive brokerage agreement with such owner, purchaser, or tenant, unless the
 14 licensee has written permission from the broker having the first exclusive brokerage
 15 agreement; provided, however, that notwithstanding the provisions of this paragraph, a
 16 licensee shall be permitted to present a proposal or bid for community association
 17 management if requested to do so in writing from a community association board of
 18 directors;"

19 SECTION 9.

20 Said chapter is further amended by striking subsection (d) of Code Section 43-40-27, relating
 21 to the investigation of complaints reported to the commission, and inserting in its place a new
 22 subsection (d) to read as follows:

23 "(d) The results of all investigations shall be reported only to the commission or to the
 24 commissioner, and the records of such investigations shall not be subject to subpoena in
 25 civil actions. Records of investigations shall be kept by the commission and no part of any
 26 investigative record shall be released for any purpose other than a hearing before the
 27 commission or its designated hearing officer, review by another law enforcement agency
 28 or lawful licensing authority upon issuance of a subpoena from such agency or authority
 29 or at the discretion of the commission upon an affirmative vote of ~~all members~~ a majority
 30 of the quorum of the commission, review by the ~~respondent licensee or applicant who is~~
 31 the subject of the notice of hearing after ~~the its~~ service of a notice of hearing, review by the
 32 commission's legal counsel, or an appeal of a decision by the commission to a court of
 33 competent jurisdiction; provided, however, if an investigation authorized by this chapter
 34 results in the commission's filing a notice of hearing or entering into settlement discussions
 35 with a member of the commission, the commission shall immediately notify the Governor
 36 or the Governor's legal counsel of such action by the commission. After service of a notice

1 of hearing, a ~~respondent~~ licensee or applicant who is the subject of the notice of hearing
2 shall have a right to obtain a copy of the investigative record pertaining to the ~~respondent~~
3 hearing. Nothing in this subsection shall prevent the commission, in its sole discretion,
4 from notifying persons who request investigations or the licensee or applicant who is the
5 subject of the notice of hearing of the receipt of a request for investigation or the
6 commission's disposition of the investigation nor from making available to the public any
7 document that becomes a public record during the hearing process authorized by
8 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'"

9 **SECTION 10.**

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