

Senate Bill 371

By: Senators Cowser of the 46th, Hamrick of the 30th, Fort of the 39th, Goggans of the 7th and Tate of the 38th

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 5 of Chapter 8 of Title 16 and Chapter 3 of Title 35 of the Official Code
2 of Georgia Annotated, relating to residential mortgage fraud and the Georgia Bureau of
3 Investigation, respectively, so as to provide the Georgia Bureau of Investigation with the
4 authority to investigate certain offenses involving fraudulent real estate transactions; to
5 provide the Georgia Bureau of Investigation subpoena power for such investigations; to
6 provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 5 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to
10 residential mortgage fraud, is amended by revising Code Section 16-8-104, relating to
11 authority of district attorneys and the Attorney General to investigate and prosecute offenses
12 involving residential mortgage fraud, as follows:

13 "16-8-104.

14 District attorneys and the Attorney General shall have the authority to conduct the criminal
15 investigation and prosecution of all cases of residential mortgage fraud under this article
16 or under any other provision of this title. Nothing in this Code section shall be construed
17 to preclude otherwise authorized law enforcement agencies from conducting investigations
18 of offenses related to residential mortgage fraud."

19 **SECTION 2.**

20 Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the Georgia
21 Bureau of Investigation, is amended by revising subsection (a) of Code Section 35-3-4,
22 relating to powers and duties of the Georgia Bureau of Investigation, by striking "or" at the
23 end of paragraph (10), by replacing the period with "; or" at the end of paragraph (11), and
24 by adding a new paragraph to read as follows:

25 "(12) Identify and investigate violations of Article 5 of Chapter 8 of Title 16."

26 **SECTION 3.**

27 Said chapter is further amended by adding a new Code section to read as follows:

28 "35-3-4.2.

29 (a) In any investigation of a violation of Article 5 of Chapter 8 of Title 16 or other criminal
30 violations involving fraudulent real estate transactions, the director, assistant director, or
31 deputy director for investigations shall be authorized to issue a subpoena, with the consent
32 of the Attorney General, to compel the production of books, papers, documents, or other
33 tangible things, including records and documents contained within, or generated by, a
34 computer or any other electronic device.

35 (b) Upon the failure of a person without lawful excuse to obey a subpoena, the director,
36 assistant director, or the deputy director for investigations, through the Attorney General
37 or district attorney, may apply to a superior court having jurisdiction for an order
38 compelling compliance. Such person may object to the subpoena on grounds that it fails
39 to comply with this Code section or upon any constitutional or other legal right or privilege
40 of such person. The court may issue an order modifying or setting aside such subpoena or
41 directing compliance with the original subpoena. Failure to obey a subpoena issued under
42 this Code section may be punished by the court as contempt of court."

43 **SECTION 4.**

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