

Senate Bill 57

By: Senators Hamrick of the 30th, Harbison of the 15th, Hudgens of the 47th, Tarver of the 22nd, Orrock of the 36th and others

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, relating to the
2 "Georgia Fair Lending Act," so as to provide for definitions; to provide for limitations on
3 home loans; to provide for limitations on subprime home loans; to provide for related
4 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Chapter 6A of Title 7 of the Official Code of Georgia Annotated, relating to the "Georgia
8 Fair Lending Act," is amended in Code Section 7-6A-2, relating to definitions, by revising
9 subparagraph (B) of paragraph (17) and adding paragraphs (10.1) and (16.1), as follows:

10 "(10.1) 'Mortgage broker' means any person who directly or indirectly for compensation
11 solicits, processes, places, or negotiates a home loan for others or offers to solicit,
12 process, place, or negotiate home loans for others and who closes home loans which may
13 be in the person's own name with funds provided by others and which loans are thereafter
14 assigned to the person providing the funding of such loans."

15 "(16.1) 'Subprime home loan' means a home loan in which the difference between the
16 annual percentage rate for the loan and the yield on United States Treasury securities
17 having comparable periods of maturity is either equal to or greater than three percent, if
18 the loan is secured by a first lien mortgage or deed of trust, or five percent, if the loan is
19 secured by a subordinate lien mortgage or deed of trust. Without regard to whether the
20 loan is subject to or reportable under the provisions of the federal Home Mortgage
21 Disclosure Act, 12 U.S.C. Section 2801 et seq., the difference between the annual
22 percentage rate and the yield on United States Treasury securities having comparable
23 periods of maturity shall be determined using the same procedures and calculation
24 methods applicable to loans that are subject to the reporting requirements of the federal
25 Home Mortgage Disclosure Act, as those procedures and calculation methods are

26 amended, provided that the yield on United States Treasury securities shall be determined
 27 as of the fifteenth day of the month prior to the date of the application for the loan."

28 "(B) The total points and fees payable in connection with the loan, ~~excluding not more~~
 29 ~~than two bona fide discount points~~, exceed: (i) 5 percent of the total loan amount if the
 30 total loan amount is \$20,000.00 or more or (ii) the lesser of 8 percent of the total loan
 31 amount or \$1,000.00 if the total loan amount is less than \$20,000.00."

32 SECTION 2.

33 Said chapter is further amended by revising Code Section 7-6A-3, relating to limitations on
 34 home loans, as follows:

35 "7-6A-3.

36 ~~All home~~ Home loans or subprime home loans, as specified in each respective provision,
 37 shall be subject to the following limitations, standards, and prohibited practices:

38 (1) No creditor shall make a home loan that finances, directly or indirectly:

39 (A) Any credit life, credit accident, credit health, credit personal property, or credit
 40 loss-of-income insurance, debt suspension coverage, or debt cancellation coverage,
 41 whether or not such coverage is insurance under applicable law, that provides for
 42 cancellation of all or part of a borrower's liability in the event of loss of life, health,
 43 personal property, or income or in the case of accident written in connection with a
 44 home loan; or

45 (B) Any life, accident, health, or loss-of-income insurance without regard to the
 46 identity of the ultimate beneficiary of such insurance;

47 provided, however, that for the purposes of this Code section, any premiums or charges
 48 calculated and paid on a monthly basis shall not be considered financed directly or
 49 indirectly by the creditor;

50 (2) No creditor or servicer shall recommend or encourage default on an existing loan or
 51 other debt prior to and in connection with the closing or planned closing of a home loan
 52 that refinances all or any portion of such existing loan or debt;

53 (3) No creditor or servicer may charge a borrower a late payment charge unless the loan
 54 documents specifically authorize the charge, the charge is not imposed unless the
 55 payment is past due for ten days or more, and the charge does not exceed 5 percent of the
 56 amount of the late payment. A late payment charge ~~may~~ shall not be imposed more than
 57 once ~~with respect to~~ on a particular late payment. If a late payment charge is deducted
 58 from a payment made on the home loan and such deduction results in a subsequent
 59 default on a subsequent payment, no late payment charge ~~may~~ shall be imposed for such
 60 default. A lender may apply any payment made in the order of maturity to a prior

61 period's payment due even if the result is late payment charges accruing on subsequent
62 payments due; and

63 (4) No creditor or servicer may charge a fee for informing or transmitting to any person
64 the balance due to pay off a home loan or to provide a release upon prepayment. When
65 such information is provided by facsimile or if it is provided upon request within 60 days
66 of the fulfillment of a previous request, a creditor or servicer may charge a processing fee
67 up to \$10.00. Payoff balances shall be provided within a reasonable time but in any event
68 no more than five business days after the request;

69 (5) No prepayment fees or penalties shall be charged or collected under the terms of a
70 subprime home loan. Any prepayment penalty in violation of this paragraph shall be
71 unenforceable. However, mortgage interest that may accrue in advance of payment in
72 full of a loan made under a local, state, or federal government sponsored mortgage
73 insurance or guaranty program, including a Federal Housing Administration program,
74 shall not be considered to be a prepayment fee or penalty;

75 (6) No person may provide, and no mortgage broker may receive, directly or indirectly,
76 any compensation that is based on, or varies with, the terms of any Federal Housing
77 Administration insured loan or subprime home loan. This paragraph shall not prohibit
78 compensation based on the principal balance of the loan;

79 (7)(A) No creditor shall make a subprime home loan to a borrower unless a creditor
80 reasonably and in good faith believes at the time the subprime loan is closed that the
81 borrower residing in the home will be able to make the scheduled loan payments, real
82 estate tax payments, and insurance payments associated with the subprime home loan.

83 (B) The determination of a borrower's reasonable ability to repay a subprime home
84 loan shall include, without limitation, consideration of: the borrower's current and
85 expected income, credit history, current obligations, and employment status; the
86 debt-to-income ratio of the borrower's monthly gross income inclusive of all debt
87 payments and total monthly housing payments including taxes, insurance, any required
88 homeowner or condominium fees, and any subordinate mortgages including those that
89 will be made contemporaneously to the same borrower; and other available financial
90 resources other than the borrower's equity in the principal dwelling that secures or
91 would secure the subprime home loan.

92 (C) The calculation assumptions used in evaluating the ability to repay for subprime
93 home loans shall include:

94 (i) The monthly payment amounts based on, at a minimum, the fully indexed rate at
95 the time of closing, assuming a fully amortizing repayment schedule;

96 (ii) Verification of all sources of income by tax returns, payroll receipts, bank
97 records, or other similar reliable documentation. Verification shall be based on the
98 most appropriate form of documentation; and

99 (iii) For subprime home loans that permit negative amortization, the repayment
100 analysis based upon the initial loan amount plus any balance increase that may accrue
101 from the negative amortization provision;

102 A creditor's analysis of a borrower's ability to repay a subprime home loan may utilize
103 reasonable commercially recognized underwriting standards and methodologies,
104 including automated underwriting systems, provided the standards and methodologies
105 comply with the provisions of this Code section.

106 (D) A creditor in a subprime home loan who, when acting in good faith, fails to comply
107 with this Code section shall not be deemed to have violated this Code section if the
108 creditor established that either:

109 (i) Within 90 days of the loan closing and prior to the institution of any action against
110 the creditor under this Code section, the borrower was notified of the compliance
111 failure; the creditor tendered appropriate restitution; the creditor offered, at the
112 borrower's option, either to make the subprime home loan comply with this Code
113 section or change the terms of the subprime home loan in a manner beneficial to the
114 borrower so that the loan will no longer be considered a subprime home loan subject
115 to the provisions of this Code section; and within a reasonable period of time
116 following the borrower's election of remedies, the creditor took appropriate action
117 based on the borrower's choice; or

118 (ii) The compliance failure was not intentional and resulted in a bona fide error
119 notwithstanding the maintenance of procedures reasonably adopted to avoid such
120 errors and within 120 days after the discovery of the compliance failure and prior to
121 the institution of any action against the creditor under this Code section or the
122 creditor's receipt of written notice of the compliance failure, the provisions of division
123 (i) of this subparagraph were met. Examples of a bona fide error include clerical,
124 calculation, computer malfunction and programming, and printing errors. An error of
125 legal judgment with respect to a person's obligations under this Code section shall not
126 be a bona fide error;

127 (8) No creditor shall engage in the act or practice of flipping a subprime home loan. For
128 purposes of this paragraph, 'flipping a subprime home loan' means the making or
129 arranging of a subprime home loan to a borrower who refinances an existing home loan
130 when the new loan does not have reasonable, tangible net benefit to the borrower
131 considering all of the circumstances including, but not limited to, the terms of both the
132 new and refinanced loans, the cost of the new loan, and the borrower's circumstances; and

133 (9) A mortgage broker, in addition to duties imposed by other statutes or at common law,
 134 shall be considered an agent of the borrower in all cases and shall:
 135 (A) Act in the borrower's best interest and in the utmost good faith toward the borrower
 136 and shall not compromise a borrower's right or interest in favor of another's right or
 137 interest, including a right or interest of the mortgage broker;
 138 (B) Safeguard and account for any money handled for the borrower;
 139 (C) Follow reasonable and lawful instructions from the borrower;
 140 (D) Use reasonable skill, care, and diligence;
 141 (E) Before closing, notify each lender of the particulars of each of the other lenders'
 142 loans if the mortgage broker knows that more than one mortgage loan will be made by
 143 different lenders contemporaneously to a borrower secured by the same real property;
 144 (F) Clearly disclose to the borrower, in a timely fashion, all material information, as
 145 specified by the department, that might reasonably affect the borrower's rights,
 146 interests, or ability to receive the borrower's intended benefit from the home loan,
 147 including total compensation the broker would receive from any of the loan options the
 148 broker presents to the borrower; and
 149 (G) Make reasonable efforts to secure a loan that is in the best interests of the borrower
 150 considering all the circumstances, including the product type, rates, charges, and
 151 repayment terms of the home loan."

152 **SECTION 3.**

153 Said chapter is further amended in Code Section 7-6A-5, relating to limitations on high-cost
 154 home loans, by revising paragraph (1) as follows:

155 ~~"(1) No prepayment fees or penalties shall be provided for in the loan documents for a~~
 156 ~~high-cost home loan or charged to the borrower after the last day of the twenty-fourth~~
 157 ~~month following the loan closing or which exceed in the aggregate:~~

158 ~~(A) In the first 12 months after the loan closing, more than 2 percent of the loan~~
 159 ~~amount prepaid; or~~

160 ~~(B) In the second 12 months after the loan closing, more than 1 percent of the amount~~
 161 ~~prepaid;"~~

162 **SECTION 4.**

163 This Act shall become effective on July 1, 2009.

164 **SECTION 5.**

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