

The House Committee on Judiciary offers the following substitute to SB 57:

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 and change definitions; to provide for
3 limitations on home loans and high-interest home loans; to provide for duties for mortgage
4 brokers; to provide for related matters; to provide for an effective date; to repeal conflicting
5 laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 6A of Title 7 of the Official Code of Georgia Annotated, relating to the "Georgia
9 Fair Lending Act," is amended in Code Section 7-6A-2, relating to definitions, by revising
10 paragraph (6) and adding new paragraphs (6.1), (10.1), (10.2), (11.1), and (19), to read as
11 follows:

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

26 "(6.1) 'Department' means the Department of Banking and Finance."

27 "(10.1) 'Mortgage broker' means any person or entity brokering a home loan, which shall
 28 include any person or entity that directly or indirectly for compensation solicits, places,
 29 or negotiates home loans for others or offers to solicit, place, or negotiate home loans for
 30 others or that closes home loans which may be in the person's or entity's own name with
 31 funds provided by others and which loans are thereafter assigned to the person or entity
 32 providing the funding of such loans.

33 (10.2) 'Negative amortization' means any payment term under which the outstanding
 34 principal balance on a home loan will increase at any time over the course of the home
 35 loan because the regular periodic payments do not cover the full amount of the interest
 36 that accrues on the underlying principal. Such term shall not include reverse mortgage
 37 transactions."

38 "(11.1) 'Prepayment charge' means any fee, charge, penalty, or premium that is required
 39 to be paid to a lender when all or any portion of the outstanding principal amount is
 40 repaid on a home loan before its scheduled time of maturity."

41 "(19) 'Yield spread premium' means any form of direct or indirect compensation that a
 42 mortgage broker, acting as the intermediary between a borrower and a lender, receives
 43 in connection with placing a borrower in a home loan with a higher interest rate than the
 44 lender's par rate for which the borrower qualifies."

45 **SECTION 2.**

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

48 "7-6A-3.

49 (a) All home loans shall be subject to the following limitations and prohibited practices:

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

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

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

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

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

65 (3) No creditor or servicer may charge a borrower a late payment charge unless the loan
66 documents specifically authorize the charge, the charge is not imposed unless the
67 payment is past due for ten days or more, and the charge does not exceed 5 percent of the
68 amount of the late payment. A late payment charge ~~may~~ shall not be imposed more than
69 once ~~with respect to~~ on a particular late payment. If a late payment charge is deducted
70 from a payment made on the home loan and such deduction results in a subsequent
71 default on a subsequent payment, no late payment charge ~~may~~ shall be imposed for such
72 default. A lender may apply any payment made in the order of maturity to a prior
73 period's payment due even if the result is late payment charges accruing on subsequent
74 payments due; ~~and~~

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

81 (5) No prepayment charge shall be assessed or collected under the terms of a home loan.
82 Any prepayment charge in violation of this paragraph shall be void and unenforceable;
83 provided, however, that mortgage interest which may accrue in advance of payment in
84 full of a loan made under a local, state, or federal government sponsored mortgage
85 insurance or guaranty program, including a Federal Housing Administration program,
86 shall not be considered to be a prepayment charge;

87 (6) No home loan shall include indebtedness which encompasses or contemplates
88 negative amortization. Any amount of principal derived from negative amortization and
89 included in a home loan shall be void and unenforceable; and

90 (7) Yield spread premiums are prohibited in the origination and closing of home loans
91 to the extent that any such premium exceeds the amount of direct payments by the
92 mortgage broker to third parties, unaffiliated with the mortgage broker, of closing costs
93 on behalf of the borrower.

94 (b) A creditor shall not make a home loan unless a reasonable creditor would believe at
95 the time the loan is consummated that the borrower will be able to make the scheduled
96 payments associated with the loan based upon a consideration of his or her current and
97 expected income, current obligations, employment status, and other financial resources,
98 other than the borrower's equity in the collateral that secures repayment of the loan. There

99 is a rebuttable presumption that the borrower is able to make the scheduled payments to
 100 repay the obligation if, at the time the loan is consummated, said borrower's total monthly
 101 debts, including amounts under the loan, do not exceed 50 percent of said borrower's
 102 monthly gross income as verified by tax returns, payroll receipts, or other third-party
 103 income verification. In a refinance of a home loan on the same real property, there shall
 104 be a rebuttable presumption that the borrower will be able to make the scheduled payments
 105 to repay the debt obligation without reverification of income and debts so long as all
 106 payments on the refinanced home loan are less than the remaining payments on the original
 107 home loan."

108 **SECTION 3.**

109 Said chapter is further amended by revising Code Section 7-6A-5, relating to limitations on
 110 high-cost home loans, as follows:

111 "7-6A-5.

112 In addition to the limitations and prohibited practices on home loans in this chapter,
 113 high-cost ~~High-cost~~ home loans shall be subject to the following limitations and prohibited
 114 practices:

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

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

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

122 ~~(2)~~(1) A high-cost home loan shall not contain a scheduled payment that is more than
 123 twice as large as the average of earlier scheduled payments. This provision does not
 124 apply when the payment schedule is adjusted to the seasonal or irregular income of the
 125 borrower;

126 ~~(3)~~(2) A high-cost home loan shall not include payment terms under which the
 127 outstanding principal balance will increase at any time over the course of the loan
 128 because the regular periodic payments do not cover the full amount of interest due;

129 ~~(4)~~(3) A high-cost home loan shall not contain a provision that increases the interest rate
 130 after default. This provision does not apply to interest rate changes in a variable rate loan
 131 otherwise consistent with the provisions of the loan documents, provided that the change
 132 in the interest rate is not triggered by the event of default or the acceleration of the
 133 indebtedness;

134 ~~(5)~~(4) A high-cost home loan shall not include terms under which more than two
135 periodic payments required under the loan are consolidated and paid in advance from the
136 loan proceeds provided to the borrower;

137 ~~(6)~~(5) Without regard to whether a borrower is acting individually or on behalf of others
138 similarly situated, any provision of a high-cost home loan agreement that allows a party
139 to require a borrower to assert any claim or defense in a forum that is less convenient,
140 more costly, or more dilatory for the resolution of a dispute than a judicial forum
141 established in this state where the borrower may otherwise properly bring the claim or
142 defense or limits in any way any claim or defense the borrower may have is
143 unconscionable and void;

144 ~~(7)~~(6) A creditor shall not make a high-cost home loan without first receiving
145 certification from a counselor with a third-party nonprofit organization approved by the
146 United States Department of Housing and Urban Development or the Georgia Housing
147 and Finance Authority that the borrower has received counseling on the advisability of
148 the loan transaction. No creditor, servicer, or its institution shall be required to contribute
149 to the funding of any nonprofit organization that provides counseling required pursuant
150 to this paragraph;

151 ~~(8) A creditor shall not make a high-cost home loan unless a reasonable creditor would~~
152 ~~believe at the time the loan is consummated that the borrower residing in the home will~~
153 ~~be able to make the scheduled payments associated with the loan based upon a~~
154 ~~consideration of his or her current and expected income, current obligations, employment~~
155 ~~status, and other financial resources, other than the borrower's equity in the collateral that~~
156 ~~secures repayment of the loan. There is a rebuttable presumption that the borrower~~
157 ~~residing in the home is able to make the scheduled payments to repay the obligation if,~~
158 ~~at the time the loan is consummated, said borrower's total monthly debts, including~~
159 ~~amounts under the loan, do not exceed 50 percent of said borrower's monthly gross~~
160 ~~income as verified by tax returns, payroll receipts, and other third-party income~~
161 ~~verification;~~

162 ~~(9)~~(7) A creditor or servicer shall not pay a contractor under a home improvement
163 contract from the proceeds of a high-cost home loan unless:

164 (A) The creditor or servicer is presented with an affidavit of the contractor that the
165 work has been completed, which affidavit meets the requirements of Code Section
166 44-14-361.2; and

167 (B) The proceeds are disbursed in an instrument payable to the borrower or jointly to
168 the borrower and the contractor or, at the election of the borrower, through a third-party
169 escrow agent in accordance with terms established in a written agreement signed by the
170 borrower, the drafter of the instrument, and the contractor prior to the disbursement;

171 ~~(10)~~(8) A creditor or servicer shall not charge a borrower any fees or other charges to
172 modify, renew, extend, or amend a high-cost home loan or to defer any payment due
173 under the terms of a high-cost home loan;

174 ~~(11)~~(9) A creditor who makes a high-cost home loan and who has the legal right to
175 foreclose shall provide notice of the intent to foreclose to the borrower in writing by
176 certified mail, return receipt requested, to the address of the borrower last known to the
177 creditor. Such notice shall be sent to the borrower at least 14 days prior to the publication
178 of the legal advertisement required by Code Section 44-14-162;

179 ~~(12)~~(10) If a creditor or servicer asserts that grounds for acceleration of a high-cost home
180 loan exist and requires the payment in full of all sums secured by the security instrument,
181 the borrower or anyone authorized to act on the borrower's behalf shall have the right at
182 any time, up to the time title is transferred by means of foreclosure by judicial proceeding
183 and sale or otherwise, to cure the default and reinstate the high-cost home loan by
184 tendering the total amount of principal, interest, late fees, and escrow deposits in arrears,
185 not including any acceleration. Cure of default as provided in this paragraph shall
186 reinstate the borrower to the same position as if the default had not occurred and shall
187 nullify as of the date of the cure any acceleration of any obligation under the security
188 instrument or note arising from the default;

189 ~~(13)~~(11)(A) To cure a default under this Code section, a borrower shall not be required
190 to pay any charge, fee, or penalty attributable to the exercise of the right to cure a
191 default as provided for in this Code section, other than the fees specifically allowed by
192 this Code section. The borrower shall not be liable for any attorneys' fees relating to
193 the borrower's default that are incurred by the creditor or servicer prior to or during the
194 30 day period set forth in this paragraph, nor for any such fees in excess of \$100.00 that
195 are incurred by the creditor or servicer after the expiration of the 30 day period but prior
196 to the time the creditor or servicer files a foreclosure action or takes other action to
197 seize or transfer ownership of the home. After the creditor or servicer files a
198 foreclosure action or takes other action to seize or transfer ownership of the home, the
199 borrower shall only be liable for attorneys' fees that are reasonable and actually incurred
200 by the creditor or servicer based on a reasonable hourly rate and a reasonable number
201 of hours plus any other reasonable and necessary expenses incurred by the creditor or
202 servicer.

203 (B) If a default is cured prior to the initiation of any action to foreclose or to seize or
204 transfer a home, the creditor or servicer shall not institute the foreclosure proceeding
205 or other action for that default. If a default is cured after the initiation of any action to
206 foreclose, the creditor or servicer shall take such steps as are necessary to terminate the
207 foreclosure proceeding or other action.

208 (C) Before any action is filed to foreclose upon the home or other action is taken to
 209 seize or transfer ownership of a home, a notice of the right to cure the default must be
 210 delivered to the borrower informing the borrower of the following:

211 (i) The nature of the default claimed on the high-cost home loan and of the borrower's
 212 right to cure the default by paying the sum of money required to cure the default. If
 213 the amount necessary to cure the default will change during the 30 day period after
 214 the effective date of the notice due to the application of a daily interest rate or the
 215 addition of late fees as allowed by this chapter, the notice shall give sufficient
 216 information to enable the borrower to calculate the amount at any point during the 30
 217 day period;

218 (ii) The date by which the borrower shall cure the default to avoid acceleration and
 219 initiation of foreclosure or other action to seize the home which date shall not be less
 220 than 30 days after the date the notice is effective and the name and address and phone
 221 number of a person to whom the payment or tender shall be made;

222 (iii) That, if the borrower does not cure the default by the date specified, the creditor
 223 or servicer may take steps to terminate the borrower's ownership in the property by
 224 commencing a foreclosure proceeding or other action to seize the home; and

225 (iv) The name and address of the creditor or servicer and the telephone number of a
 226 representative of the creditor or servicer whom the borrower may contact if the
 227 borrower disagrees with the creditor's or servicer's assertion that a default has
 228 occurred or the correctness of the creditor's or servicer's calculation of the amount
 229 required to cure the default;

230 ~~(14)~~(12) A high-cost home loan shall not contain nor shall a creditor or servicer enforce
 231 a provision that permits a creditor or servicer, in its sole discretion, to accelerate the
 232 indebtedness. This paragraph does not prohibit acceleration of the loan in good faith due
 233 to the borrower's failure to abide by the material terms of the loan; and

234 ~~(15)~~(13) All high-cost home loan documents that create a debt or pledge property as
 235 collateral shall contain the following notice on the first page in a conspicuous manner:
 236 "Notice: This is a mortgage subject to special rules under the "Georgia Fair Lending Act."
 237 Purchasers or assignees of this mortgage may be liable for all claims and defenses by the
 238 borrower with respect to the mortgage."

239 **SECTION 4.**

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

241 "7-6A-6.1.

242 A mortgage broker shall:

- 243 (1) Act in good faith and with fair dealing in any transaction, practice, or course of
 244 business in connection with the making of any home loan or high-interest home loan;
 245 (2) Use reasonable skill, care, and diligence;
 246 (3) Safeguard and account for any money handled for the borrower; and
 247 (4) Before closing:
 248 (A) Notify each lender in writing of the particulars of each of the other lenders' home
 249 loans, if the mortgage broker knows that more than one home loan will be made by
 250 different lenders contemporaneously to a borrower secured by the same real property;
 251 (B) Clearly disclose to the borrower in writing the dollar amounts and sources of all
 252 compensation the mortgage broker has received or will receive in connection with any
 253 home loan the mortgage broker has secured for the borrower. Such disclosure shall
 254 include, but shall not be limited to, any compensation which is derived from a yield
 255 spread premium; and
 256 (C) Clearly disclose to the borrower all material information, as specified by the
 257 department, that might affect the borrower's rights, interests, or ability to receive the
 258 borrower's intended benefit from the home loan."

259 **SECTION 5.**

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

261 "7-6A-8.1.

262 Nothing contained in this chapter shall limit any rights, duties, remedies, or penalties
 263 imposed by law, including, without limitation, Part 2 of Article 15 of Chapter 1 of Title 10,
 264 the 'Fair Business Practices Act of 1975.'"

265 **SECTION 6.**

266 This Act shall become effective on August 1, 2009.

267 **SECTION 7.**

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