Senate Bill 100

By: Senators Hamrick of the 30th, Thompson of the 33rd, Johnson of the 1st and Starr of the 44th

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to offenses involving theft, so as to provide for the "Georgia Residential Mortgage Fraud Act"; to provide a short title; to provide for definitions; to define the criminal offense of residential mortgage fraud; to provide for venue; to provide penalties; to authorize district attorneys and the Attorney General to investigate and prosecute cases of residential mortgage fraud; to provide for the forfeiture of real and personal property; to amend Chapter 14 of Title 16 of the Official Code of Georgia Annotated, the "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act," so as to include residential mortgage fraud within the definition of racketeering activity; to provide for findings and a statement of purpose; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

The General Assembly finds and declares that fraud involving residential mortgages is at an all-time high in the United States and in Georgia. Mortgage lending institutions and borrowers have suffered hundreds of millions of dollars in losses due to residential mortgage fraud. Homeowners in neighborhoods plagued by mortgage fraud have witnessed the deterioration of their neighborhoods. Fraudulently inflated property values in their neighborhoods have resulted in substantial increases in property taxes. The General Assembly therefore concludes that for the protection of the general public, and particularly for the protection of borrowers, homeowners, lending institutions, and the integrity of the mortgage lending process, the "Georgia Residential Mortgage Fraud Act" shall be enacted.

SECTION 2.

Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to offenses involving theft, is amended by adding a new Article 5 to read as follows:

″ARTICLE 5

16-8-100.

This article shall be known and may be cited as the 'Georgia Residential Mortgage Fraud Act.'

16-8-101.

(1) 'Mortgage lending process' means the process through which a person seeks or obtains a residential mortgage loan including, but not limited to, solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan. Documents involved in the mortgage lending process include, but are not limited to, uniform residential loan applications or other loan applications; appraisal reports: HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, and payroll stubs; and any required disclosures.

(2) 'Pattern of residential mortgage fraud' means one or more misstatements, misrepresentations, or omissions made during the mortgage lending process that involve two or more residential properties, which have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics.

(3) 'Person' means a natural person, corporation, company, limited liability company, partnership, trustee, association, or any other entity.

(4) 'Residential mortgage loan' means a loan or agreement to extend credit made to a person, which loan is secured by a deed to secure debt, security deed, mortgage, security interest, deed of trust, or other document representing a security interest or lien upon any interest in one-to-four family residential property located in Georgia including the renewal or refinancing of any such loan.

16-8-102.

A person commits the offense of residential mortgage fraud when, with the intent to defraud, such person:

(1) Knowingly makes any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

(2) Knowingly uses or facilitates the use of any deliberate misstatement, misrepresentation, or omission, knowing the same to contain a misstatement,

misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

(3) Receives any proceeds or any other funds in connection with a residential mortgage closing that such person knew resulted from a violation of paragraph (1) or (2) of this Code section;

(4) Conspires to violate any of the provisions of paragraph (1), (2), or (3) of this Code section; or

(5) Files or causes to be filed with the official registrar of deeds of any county of this state any document such person knows to contain a deliberate misstatement, misrepresentation, or omission.

An offense of residential mortgage fraud shall not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, and interpretations related to the mortgage lending process.

16-8-103.

For the purpose of venue under this article, any violation of this article shall be considered to have been committed:

(1) In the county in which the residential property for which a mortgage loan is being sought is located;

(2) In any county in which any act was performed in furtherance of the violation;

(3) In any county in which any person alleged to have violated this article had control or possession of any proceeds of the violation;

(4) If a closing occurred, in any county in which the closing occurred; or

(5) In any county in which a document containing a deliberate misstatement, misrepresentation, or omission is filed with the official registrar of deeds.

16-8-104.

District attorneys and the Attorney General shall have the authority to conduct the criminal investigation and prosecution of all cases of residential mortgage fraud under this article or under any other provision of this title.

16-8-105.

(a) Any person violating this article shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one year nor more than ten years, by a fine not to exceed $5,000.00, or both.

(b) If a violation of this article involves engaging or participating in a pattern of residential mortgage fraud or a conspiracy or endeavor to engage or participate in a pattern of residential mortgage fraud, said violation shall be punishable by imprisonment for not less than three years nor more than 20 years, by a fine not to exceed $100,000.00, or both.

(c) Each residential property transaction subject to a violation of this article shall constitute a separate offense and shall not merge with any other crimes set forth in this title.

16-8-106.

All real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this article shall be subject to forfeiture to the state. Forfeiture shall be had by the same procedure set forth in Code Section 16-14-7. District attorneys and the Attorney General may commence forfeiture proceedings under this article."

SECTION 3.

Chapter 14 of Title 16 of the Official Code of Georgia Annotated, the "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act," is amended by striking divisions (9)(A)(xxxvii) and (9)(A)(xxxviii) of Code Section 16-14-3, relating to definitions of terms relating to racketeering activity, in their entirety and inserting in lieu thereof the following:

"(xxxvii) Code Section 33-1-9, relating to insurance fraud; ~~or~~

(xxxviii) Code Section 16-17-2, relating to payday loans; or

(xxxix) Code Section 16-8-102, relating to residential mortgage fraud."

SECTION 4.

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

SECTION 5.

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