

House Bill 750 (COMMITTEE SUBSTITUTE)

By: Representatives Frye of the 118th, Williams of the 119th, Abrams of the 89th, Cheokas of the 138th, England of the 116th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to licensing of mortgage lenders and mortgage brokers, so as to provide for an exemption to mortgage loan originator licensing requirements for employees of certain nonprofit corporations; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to licensing of mortgage lenders and mortgage brokers, is amended by revising Code Section 7-1-1001, relating to exemptions from licensing requirements of mortgage brokers and mortgage lenders, as follows:

"7-1-1001.

(a) The following persons shall not be required to obtain a mortgage loan originator, mortgage broker, or mortgage lender license and shall not be subject to the provisions of this article but may be subject to registration requirements, unless otherwise provided by this article:

(1) Any lender authorized to engage in business as a bank, credit card bank, savings institution, building and loan association, or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia, the deposits of which are federally insured;

(2) Any wholly owned subsidiary of any lender described in paragraph (1) of this subsection. Any subsidiary that violates any applicable law of this article may be subject to a cease and desist order as provided for in Code Section 7-1-1018;

(2.1) Any wholly owned subsidiary of any bank holding company; provided, however, that such subsidiary shall be subject to registration requirements in order to facilitate the

department's handling of consumer inquiries. Such requirements are contained in Code Section 7-1-1003.3;

(3) Registered mortgage loan originators, when acting for an entity described in paragraph (1) or (2) of this subsection. To qualify for this exemption, an individual shall be registered with and maintain a unique identifier through registration with the Nationwide Mortgage Licensing System and Registry;

(4) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of such individual. For purposes of this exemption, the term 'immediate family member' means a spouse, child, sibling, parent, grandparent, or grandchild. Immediate family members shall include stepparents, stepchildren, stepsiblings, and adoptive relationships;

(5) An attorney licensed to practice law in Georgia who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(6) A Georgia licensed real estate broker or real estate salesperson not actively engaged in the business of negotiating mortgage loans or a Georgia licensed real estate salesperson providing information to a lender or its agent related to an existing or potential short sale transaction in which a separate fee is not received by such real estate broker or real estate salesperson; however, such real estate broker or real estate salesperson who directly or indirectly negotiates, places, or finds a mortgage for others shall not be exempt from the provisions of this article;

(7) Any person performing any act relating to mortgage loans under order of any court;

(8) Any natural person or the estate of or trust created by a natural person making a mortgage loan with his or her own funds for his or her own investment, including those natural persons or the estates of or trusts created by such natural persons who make a purchase money mortgage for financing sales of their own property;

(9) The United States of America, the State of Georgia or any other state, and any agency, division, or corporate instrumentality of any governmental entity, including without limitation: the Georgia Housing and Finance Authority, the Georgia Development Authority, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA), the United States Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), the Farmers Home Administration (FmHA), and the Farm Credit Administration and its chartered agricultural credit associations;

(10) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence;

(11) Any person who makes a mortgage loan to an employee of such person as an employment benefit;

(12) Any licensee under Chapter 3 of this title, the 'Georgia Industrial Loan Act,' provided that any mortgage loan made by such licensee is for \$3,000.00 or less;

(13) Nonprofit corporations making mortgage loans to promote home ownership or improvements for the disadvantaged;

(14) A natural person employed by a licensed or registered mortgage broker, a licensed or registered mortgage lender, or any person exempted from the mortgage broker or mortgage lender licensing requirements of this article when acting within the scope of employment and under the supervision of the mortgage broker or mortgage lender or exempted person as an employee and not as an independent contractor, except those natural persons exempt from licensure as a mortgage broker or mortgage lender under paragraph (17) of this subsection. To be exempt from licensure as a mortgage broker or mortgage lender, a natural person shall be employed by only one such employer and shall be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004. Such natural person, who meets the definition of mortgage loan originator provided in paragraph (22) of Code Section 7-1-1000, shall be subject to mortgage loan originator licensing requirements. A natural person against whom a cease and desist order has become final shall not qualify for this exemption while under the employment time restrictions of subsection (o) of Code Section 7-1-1004 if such order was based on a violation of Code Section 7-1-1002 or 7-1-1013 or whose license was revoked within five years of the date such person was hired;

(15) Any person who purchases mortgage loans from a mortgage broker or mortgage lender solely as an investment and who is not in the business of brokering, making, purchasing, or servicing mortgage loans;

(16) Any natural person who makes five or fewer mortgage loans in any one calendar year. A person other than a natural person who makes five or fewer mortgage loans in any one calendar year shall not be exempt from the licensing requirements of this article;

or

(17)(A) A natural person otherwise required to be licensed as a mortgage lender or mortgage broker, who is under an exclusive written independent contractor agreement with any person that is a wholly owned subsidiary of a financial holding company or bank holding company, savings bank holding company, or thrift holding company, which subsidiary also meets the following requirements, subject to the review and approval of the department:

(i) The subsidiary has provided an undertaking of accountability supported by a surety bond equal to the lesser of \$1 million or \$50,000.00 per exempt person, to cover all of its persons exempted by this paragraph, that includes full and direct financial responsibility for the mortgage broker activities of each such exempted person, and also provides for the education of the exempt persons, the handling of consumer complaints related to the exempt persons, and the supervision of the mortgage broker activities of the exempt persons;

(ii) The subsidiary has applied for and been granted a mortgage broker or mortgage lender license, consistent with the provisions of this article and renewable annually; and

(iii) The subsidiary has paid applicable fees for this license, which license fees shall be the lesser of one-half of the sum of the cost of the individual licenses or \$100,000.00.

(B) To maintain the exemption, a natural person shall:

(i) Solicit, process, place, or negotiate a mortgage loan to be made only by the licensed subsidiary or its affiliate; and

(ii) Be at all times in compliance with the provisions and prohibitions of Code Section 7-1-1013 and the provisions and prohibitions applicable to employees under Code Section 7-1-1004.

(C) For purposes of this paragraph, the term 'financial holding company' means a financial holding company as defined in the Bank Holding Company Act of 1956, as amended.

(D) The commissioner shall provide by rule or regulation for the implementation of this paragraph; or

(18)(A) An employee of a bona fide nonprofit corporation who acts as a mortgage loan originator only with respect to his or her work duties with the bona fide nonprofit corporation and who acts as a mortgage loan originator only with respect to mortgage loans with terms that are favorable to the borrower shall be exempt from obtaining a mortgage loan originator license. In order for a corporation to be considered a bona fide nonprofit corporation under this paragraph, the department shall determine, under criteria and pursuant to processes established by the department, that the nonprofit corporation:

(i) Has the status of a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Promotes affordable housing;

(iii) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(iv) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(v) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;

(vi) Provides or identifies for the borrower mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs. In order for mortgage loans to have terms that are favorable to the borrower, the department shall determine that the terms are consistent with loan origination in a public or charitable context, rather than in a commercial context; and

(vii) Satisfies the exemption from licensure set forth in paragraph (13) of this subsection.

(B) The department shall periodically examine the books and activities of an organization it has previously identified as a bona fide nonprofit corporation for purposes of this paragraph in order to determine if it continues to meet the criteria for such status under subparagraph (A) of this paragraph. In conducting such an examination, the department shall have all of the powers set forth in Code Section 7-1-1009. In the event the nonprofit corporation no longer qualifies for such status, then the employee exemption from having a mortgage loan originator license shall no longer be applicable.

(b) Exemptions enumerated in paragraphs (1), (2), (2.1), (7), (8), (9), (11), (12), (13), (14), (15), (16), and (17) of subsection (a) of this Code section shall be exemptions from licensure as a mortgage broker or mortgage lender only. Nothing in paragraphs (1), (2), (2.1), (7), (8), (9), (11), (12), (13), (14), (15), (16), and (17) of subsection (a) of this Code section shall be intended to exempt natural persons from compliance with mortgage loan originator licensing requirements as set forth in this article and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008. Individuals that transact business as a mortgage loan originator, unless specifically exempted by paragraph (3), (4), (5), (6), ~~or~~ (10), ~~or~~ (18) of subsection (a) of this Code section, shall obtain a mortgage loan originator license as required by Code Section 7-1-1002 whether they are employed by a mortgage broker, mortgage lender, or person exempted as a mortgage broker or lender as set forth in this subsection."

SECTION 2.

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

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SECTION 3.

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