

The House Committee on Banks and Banking offers the following substitute to HB 1040:

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 15 of Chapter 1 of Title 10 and Article 13 of Chapter 1 of Title 7
2 of the Official Code of Georgia Annotated, relating to the Fair Business Practices Act and
3 licensing of mortgage lenders and mortgage brokers, respectively, so as to prohibit unfair or
4 deceptive practices in consumer transactions related to mortgage trigger leads; to provide for
5 definitions; to provide for a remedy; to provide for related matters; to provide for an effective
6 date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
10 relating to the Fair Business Practices Act, is amended by adding a new Code section to read
11 as follows:

12 "10-1-393.20.

13 (a) For purposes of this Code section, the term:

14 (1) 'Mortgage broker' shall have the same meaning as provided in Code
15 Section 7-1-1000.

16 (2) 'Mortgage lender' shall have the same meaning as provided in Code
17 Section 7-1-1000.

18 (3) 'Mortgage trigger lead' means a consumer report obtained pursuant to
19 Section 604(c)(1)(B) of the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681b,
20 where the issuance of the report is triggered by an inquiry made with a consumer
21 reporting agency in response to an application for credit. Such term shall not include a
22 consumer report on an applicant obtained by a mortgage lender or mortgage broker with
23 which the applicant has initially applied for credit or which holds or services an existing
24 extension of credit of the applicant who is the subject of the report.

25 (b) When using a mortgage trigger lead to solicit a consumer who has applied for a loan
26 with another mortgage lender or mortgage broker, it shall be an unfair or deceptive act or
27 practice to:

28 (1) Fail to state in the initial solicitation that the person is not affiliated with the
29 mortgage lender or broker with which the consumer initially applied;

30 (2) Fail in the initial solicitation to conform to state and federal law relating to
31 prescreened solicitations using consumer reports, including the requirement to make a
32 firm offer of credit to the consumer;

33 (3) Use information regarding consumers who have opted out of the prescreened offers
34 of credit or who have placed their contact information on the federal do-not-call registry;
35 or

36 (4) Solicit a consumer with an offer of certain rates, terms, and costs with the knowledge
37 that the rates, terms, or costs will be subsequently changed to the detriment of the
38 consumer.

39 (c) Failure to comply with the provisions of this Code section shall be considered an unfair
40 or deceptive act or practice which is unlawful and shall therefore be punishable by the
41 provisions of this part."

42 **SECTION 2.**

43 Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to
44 licensing of mortgage lenders and mortgage brokers, is amended in Code Section 7-1-1013,
45 relating to prohibition of certain acts, by revising paragraphs (10) and (11) and by adding a
46 new paragraph to read as follows:

47 "(10) Provide an extension of credit or collect a mortgage debt by extortionate means;

48 **or**

49 (11) Purposely withhold, delete, destroy, or alter information requested by an examiner
50 of the department or make false statements or material misrepresentations to the
51 department or the Nationwide Multistate Licensing System and Registry or in connection
52 with any investigation conducted by the department or another governmental agency; or

53 (12) Engage in unfair or deceptive acts or practices in violation of Code
54 Section 10-1-393.20 of the 'Fair Business Practices Act of 1975.'"

55 **SECTION 3.**

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

58 **SECTION 4.**

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