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2009 Session**

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**Senate Banking and Financial Institutions Committee**  
**2009**  
**Rules of Operation**

1. These Committee Rules of Operation shall be consistent with the Senate Rules regarding establishment of Rules of Operation.
2. All meetings of the Committee shall be open to the public in accordance with Senate Rule 1-5.1.
3. The Committee shall meet at the time and place designated by the Secretary of the Senate and approved by the Committee on Administrative Affairs.
4. The Committee Quorum shall be six (6) members.
5. The Chairman shall determine bills and resolutions to be considered and the order in which such are called.
6. The Chairman shall have the authority to refer bills and resolutions to subcommittees for study. Such subcommittees shall have the authority to make recommendations to the full committee. All actions of any subcommittee shall be approved or disapproved by the standing committee.
7. The Committee shall convene, recess, and adjourn upon the order of the Chairman.
8. Committee rules may be amended by a two-thirds vote of the full membership of the Committee.
9. A bill, resolution, or other matter shall be considered only after presentation by its principal author or his or her designee. The principal author shall be notified in writing at his or her Capitol office no less than twenty-four (24) hours prior to the scheduled presentation. In the event more than one member of the General Assembly has signed a measure, the principal author shall be the one whose name appears first in the list of authors.
10. Precedence of motions shall be as set out in Senate Rule 2-5.3.
11. The proceedings of all meetings shall be reduced to writing. The recording of the minutes of the committee and subcommittee meetings shall comply with Senate Rule 2-1.7(d).
12. Any member or members of the committee who disagree with the majority committee report shall have the privilege of filing a minority report. The minority report must state succinctly the reasons for the dissent.
13. Where the Committee rules are silent on a specific issue, the Rules of the Senate shall apply.

**MINUTES OF THE SENATE BANKING AND FINANCIAL INSTITUTIONS  
COMMITTEE  
Wednesday, February 4<sup>th</sup>, 2009**

The Senate Banking and Financial Institutions Committee held its first meeting of the 2009 Session on Wednesday, February 4<sup>th</sup>, in room 125 of the Capitol. Chairman Bill Hamrick called the meeting to order at 2:08 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30 <sup>th</sup> , Chairman	Senator Jeff Mullis, 53 <sup>rd</sup> , Ex-Officio
Senator Ed Tarver, 22 <sup>nd</sup> , Secretary	Senator Jack Murphy, 27 <sup>th</sup>
Senator John Bulloch, 11 <sup>th</sup>	Senator Chip Pearson, 51 <sup>st</sup> , Ex-Officio
Senator Greg Goggans, 7 <sup>th</sup> , Ex-Officio	Senator Steve Thompson, 33 <sup>rd</sup>
Senator Ed Harbison, 15 <sup>th</sup>	

**NOTE:** Senators Hudgens, 47<sup>th</sup>, Crosby, 13<sup>th</sup>, Rogers 21<sup>st</sup>, and Shafer, 48<sup>th</sup>, were absent from the meeting.

Chairman Hamrick called the meeting to order. Members of the staff and the committee were introduced.

**[SB 57](#) (Hamrick, 30<sup>th</sup>) Georgia Fair Lending Act; definitions; provide for limitations on home loans; fees for filing documents**

**Chairman Bill Hamrick, 30<sup>th</sup>**, author of this legislation, began the first of several hearings on **SB 57**, which would revise certain *Georgia Fair Lending Act* (GFLA) policies on mortgages. Chairman Hamrick stated Georgia had been going through hardships common to every state dealing with the foreclosure crisis, and his focus in drafting this legislation was to address current and future foreclosure issues. Specifically, Chairman Hamrick targeted the current code sections dealing with two types of mortgage loans that had caused the majority of the massive amounts of foreclosures; the option adjustable rate mortgage (ARM) and subprime credit loans. His aim was to properly define these two loan structures and set standards for how lenders could operate under those categories. Chairman Hamrick stated **SB 57** also included several other key problem areas as they related to mortgages which were separated into the following sections: Lending Practices, Document Filing, Parole Evidence, and Rights of Tenants Living in Property under Foreclosure. Chairman Hamrick shared the following summary of these issues with the committee:

### Lending Practices

Specifically, this legislation provides standards, limitations and prohibited practices, including:

- No creditor would make a home loan that finances, directly or indirectly: any credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance, debt suspension coverage, or debt cancellation coverage, whether or not such coverage was insurance under applicable law, that provided for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a home loan; or any life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance; however, any premiums or charges calculated and paid on a monthly basis would not be considered financed directly or indirectly by the creditor;
- No creditor or servicer would recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a home loan that refinanced all or any portion of such existing loan or debt;
- No creditor or servicer could charge a borrower a late payment charge unless the loan documents specifically authorize the charge, the charge was not imposed unless the payment is past due for ten days or more, and the charge did not exceed 5 percent of the amount of the late payment. A late payment charge could not be imposed more than once with respect to a particular late payment. If a late payment charge was deducted from a payment made on the home loan and such deduction resulted in a subsequent default on a subsequent payment, no late payment charge could be imposed for such default. A lender may apply any payment made in the order of maturity to a prior period's payment due even if the result was late payment charges accruing on subsequent payments due;
- No creditor or servicer could charge a fee for informing or transmitting to any person the balance due to pay off a home loan or to provide a release upon prepayment. When such information was provided by facsimile or if it was provided upon request within 60 days of the fulfillment of a previous request, a creditor or servicer could charge a processing fee up to \$10.00. Payoff balances would be provided within a reasonable time but in any event no more than five business days after the request;
- No prepayment fees or penalties would be charged or collected under the terms of a subprime home loan. Any prepayment penalty in violation of this paragraph would be unenforceable;
- No person could provide, and no mortgage broker could receive, directly or indirectly, any compensation that was based on, or varied with, the terms of any subprime home loan;

- No reasonable creditor would make a home loan to a borrower unless the creditor believed at the time the loan was closed that the borrower who resided in the home would be able to make the scheduled loan payments, real estate tax payments, and insurance payments associated with the loan;
- The determination of a borrower's reasonable ability to repay a subprime home loan or nontraditional home loan would include, without limitation, consideration of: the borrower's income; credit history; current obligations and employment status; the debt-to-income ratio of the borrower's monthly gross income inclusive of all debt payments and total monthly housing payments including taxes, insurance, any required homeowner or condominium fees, and any subordinate mortgages including those that will be made contemporaneously to the same borrower; and other available financial resources other than the borrower's equity in the principal dwelling that secures or would secure the subprime or nontraditional home loan.
- The calculation assumptions used in evaluating the ability to repay for nontraditional mortgages and subprime loans would include: The monthly payment amounts based on, at a minimum, the fully indexed rate, assuming a fully amortizing repayment schedule; verification of all sources of income by tax returns, payroll receipts, bank records, or other similar reliable documentation. Verification would be based on the most appropriate form of documentation; and for products that permit negative amortization, the repayment analysis based upon the initial loan amount plus any balance increase that could accrue from the negative amortization provision; and
- A mortgage broker, in addition to duties imposed by other statutes or at common law, would be considered an agent of the borrower in all cases and would: Act in the borrower's best interest and in the utmost good faith toward the borrower and would not compromise a borrower's right or interest in favor of another's right or interest, including a right or interest of the mortgage broker; safeguard and account for any money handled for the borrower; follow reasonable and lawful instructions from the borrower; use reasonable skill, care, and diligence; clearly disclose to the borrower, in a timely fashion, all material information that might reasonably affect the borrower's rights, interests, or ability to receive the borrower's intended benefit from the home loan, including total compensation the broker would receive from any of the loan options the broker presents to the borrower; and make reasonable efforts to secure a loan that was in the best interests of the borrower considering all the circumstances, including the product type, rates, charges, and repayment terms of the home loan.

### Document Filing

The purchaser would present the deed under power to the Clerk of the Superior Court to have the same recorded no later than 30 days following the date of the exercise of a power of sale in a mortgage, security deed, or other lien contract. Failure to record the deed would result in a late filing penalty. The legislation changed the amount of filing fees paid to the Clerk of the Superior Court for filing documents pertaining to a deed under power of sale more than 30 days following the exercise of a power of sale in a mortgage, security deed, or other lien contract.

Filing a deed under power more than 30 days but less than 60 days following the exercise of a power of sale in a mortgage, security deed, or other lien contract	\$500.00
Filing a deed under power more than 60 days but less than 90 days following the exercise of a power of sale in a mortgage, security deed, or other lien contract	\$2,000.00
Filing a deed under power more than 90 days following the exercise of a power of sale in a mortgage, security deed, or other lien contract	\$10,000.00

### Parole Evidence as Proof of Mortgage

This legislation allowed parole evidence to be used to prove an apparent deed is a mortgage. An instrument of conveyance which purports on its face to be a deed, or a series of contracts which could include a deed of conveyance, a lease, or a right of repurchase, would be held to be an equitable mortgage when the evidence demonstrated that the essential transaction was to transfer an interest in real property as security for the performance of an obligation. The factors relevant to the determination of whether at law and in equity a transaction would be deemed to be an equitable mortgage include, but are not limited to:

- (1) The adequacy of the consideration;
  - (2) The retention of possession by the prior owner;
  - (3) The representation of all parties by legal counsel;
  - (4) The existence of indebtedness that was in default prior to the transaction;
  - (5) The relative size of the debt in default to the fair market value of the property;
- and
- (6) The avoidance of the equity of redemption.

If a deed that was absolute on its face, or a series of contracts taken collectively, was found to be an equitable mortgage, the rights of the transferee would be as the holder of a mortgage at law securing only such indebtedness as determined by a judge.

### Rights of Tenants Living in Property under Foreclosure

No later than 30 days before the date of a proposed foreclosure, the secured creditor would send by registered or certified mail or statutory overnight delivery, return receipt requested, addressed to 'Occupant' at the address of the property. In regard to writs of possession, if on the trial of a case, a tenant could present proof that he or she was a tenant pursuant to a valid lease in which the landlord on the lease was foreclosed upon for the property at issue, then the writ of possession would be effective at the expiration of 60 days so long as the tenant tendered one month's rent to the court registry within seven days of the trial of the case and tendered a second month's rent within 30 days of the trial.

After sharing this summary of information with the committee, Chairman Hamrick opened the floor for discussion of concerns and issues. The following people spoke in favor of the disclosure of ownership portion of the bill, and relayed the problem issues with city and county code enforcement that occur when a property was foreclosed on: Mayor **Bucky Johnson**, City of Norcross; Mayor **Linda Bleckinger**, City of Auburn; Code Enforcement Officer **Maggie Maddox**, City of Auburn; and Mayor **Jimmy Wilbanks**, City of Dacula.

**NOTE:** Senators Murphy, 27<sup>th</sup>, Mullis, 53<sup>rd</sup>, and Pearson, 51<sup>st</sup>, arrived at the meeting.

Testimony continued on the problem areas in the GFLA. Chairman Hamrick recognized **Kathy Floyd**, representing AARP, who stated that the financial crisis was triggered by the rise in mortgage delinquencies and foreclosures. In September of 2008, AARP released the first-ever analysis of data on the mortgage crisis by age and found that homeowners age 50 and over had been significantly affected by the mortgage crisis. More than 684,000 homeowners age 50 and over were delinquent, were in foreclosure, or lost their homes during the six months ending December 2007. The impact of foreclosure was often more significant for older households as they had less time and ability to recover the financial losses associated with a foreclosure. The problem was likely to grow as homeowners increasingly carried debt into their retirement years. Kathy Floyd stated that AARP applauded Chairman Hamrick for taking on this difficult issue, and strongly favored **SB 57** as legislation that would help prevent foreclosures in the future as well as help Georgians already in crisis.

Chairman Hamrick recognized **Sen. Steve Thompson, 33<sup>rd</sup>**, with a question about his competing legislation, **SB 54**, and the definition of various loans. Sen. Steve Thompson wondered whether this legislation was capturing people that it was attempting to capture, and also whether we had a list of the various types of loans covered and defined under previous law (2002). Chairman Hamrick said this was a good point of research for further study since there was a struggle with defining option arms and subprime loans. Chairman Hamrick stated the main problems were that with option arms the balance rose until it became hard to pay down the principal, and subprime loans were given to people who were less credit-worthy. Defining those types of loans and setting standards for what the lender must do in those categories would help solve those issues. Chairman Hamrick made one clarification by stating that commercial banks were exempted from the legislation because they were preempted by federal law, and because of that fact he believed that the Federal government had in effect then left it up to the states to regulate non-bank loans in order to keep

foreclosures down and stabilize the housing markets.

Chairman Hamrick recognized **Bill Brennan**, Atlanta Legal Aid, to speak on the legislation. Chairman Hamrick commended Mr. Brennan's work in the community for the last 20 years as the Director of the Home Defense program, which specialized in home ownership fraud issues, especially predatory lending and foreclosure rescue scams. Mr. Brennan stated that this legislation was urgent and desperately needed because of two major reoccurring issues. Number one was the rampant lending without regard to the borrowers ability to pay, and secondly, a huge number of elderly people were being flipped on refinance schemes with a "pay option arm" on the last loan. A third issue with the legislation was the focus on the originators of the loans when servicers and trustee banks should be added to the regulations to make the legislation actually work. The topic of assignee liability was then introduced through a handout Mr. Brennan gave the committee that consisted of a flow chart entitled "The Securitization Structure." Mr. Brennan explained the connections starting with the homeowners, mortgage brokers, and original mortgage lenders that connected to investment banks who buy the loans in mortgage bundles. They in turn connected to trustee banks and investors that would ultimately end up being the ones who foreclose on the bad loans. To put it simply, Mr. Brennan stated most people were being foreclosed on by the company holding the mortgage-bundle not the original lender. Mr. Brennan agreed with the need to establish supplier-end laws with this legislation, but pleaded with the committee to add to the legislation a remedy that could be asserted against the company that ended up holding the mortgage. If the legislation explicitly made the company that ended up with the loan liable, they would not buy predatory subprime loans, and everyone down the line would follow this law and the committee would send a clear message that this type of lending must stop. Mr. Brennan also stated that this was especially necessary because most of the companies originating the loans were transient and disappeared. Mr. Brennan also urged the committee to keep the flipping provision in the legislation.

Chairman Hamrick again stated that new language will include flipping into one of the two categories that SB 57 attempts to define, and that [SB 57](#) was still a work in progress. Chairman Hamrick recognized **Sen. Steve Thompson, 33<sup>rd</sup>**, who made a statement that in 2003 the legislation took the whole classification out of the GFLA, and that even though not many subprime loans were being made now he was "afraid we closed the gate after the cattle got out." He continued with the comment that the legislation in 2003 changed the standard to "knowingly and willfully" which is very hard to prove in court, and that unless this standard was changed there was not much that the current law does to help. **Bill Brennan** agreed and stated that standards should increase to give appreciable benefit to the borrower, and that it might be worth looking at the federal language since the federal Truth in Lending Act (TILA) was working well.

**NOTE:** Senators Mullis, 53<sup>rd</sup>, and Pearson, 51<sup>st</sup>, left to attend another meeting.

Chairman Hamrick recognized **Loretta Salzano**, Legal Counsel for the Mortgage Bankers Association of Georgia, to speak. Ms. Salzano stated that the focus should be on subprime loans alone. She believed that the existing provisions of the GFLA should be left alone, and suggested that there was a need to take into account that the market had changed. She stated that the federal Truth in Lending Act (TILA) was recently amended to create a category of high-price loans, and that the new law already limited pre-payment penalties. Ms. Salzano advised that everyone should give TILA a chance to work. Ms. Salzano continued with the statement that the borrower's ability to pay should not be used as a determining factor for non-traditional or high cost loans, and that the current law does work in defining the relationship between broker and lender. A determination regarding ability to repay should only be made for subprime and traditional home loans, and not all home loans as defined by the GFLA. Chairman Hamrick recognized **Sen. Steve Thompson, 33<sup>rd</sup>**, who asked if the lender always had to make clear how a loan is paid back, and Ms. Salzano replied that the lender should exercise reasonable prudence but under current law there was no affirmative duty to inform. Chairman Hamrick recognized **Sen. Greg Goggans, 7<sup>th</sup>**, who asked why would anyone be opposed to everyone being required to look at the ability to repay in the present atmosphere, and Ms. Salzano replied that some people may have lots of assets, not income, or irregular income that hinders their ability to show this in a traditional manner, and that the requirement to do so would add additional costs to the loan. Chairman Hamrick recognized **Sen. Steve Thompson, 33<sup>rd</sup>**, who stated that everyone should be required to show how a loan will be paid back, no exceptions. There was loud agreement among the members of the committee with this statement. After some discussion, Chairman Hamrick commented that he could see a consensus developing that to define both nontraditional and subprime loans would give them the ability to require some income verification in those areas and allow for regulation.

Chairman Hamrick recognized **Marty Stone**, Vice President of Foreclosures for Promise Solutions, to speak to the bill. Mr. Stone said that he agreed to the necessity of adjusting the time frames for foreclosure notification to the 60, 90, 120 day provision, and was also a proponent of the Cash for Keys Assistance for victims moving out. He would also like to see the deed recorded within 30 days of the sale, and see more reasonable financial penalties for non-compliance. He would support fees of \$250, \$500 and \$750.

Chairman Hamrick recognized **Sen. Vincent Fort, 39<sup>th</sup>**, to speak to the legislation. Sen. Fort stated he believed the perfect should not be the enemy of the good, but should be the enemy of the marginal and that in his opinion this legislation is marginal because the issue of assignee liability was not addressed. He recommended repeal of the current code language in 7-6A-6 and requested replacement language that added assignee liability which could be found in Sen. Steve Thompson's competing legislation, SB 54, which had also been assigned to the committee. Sen. Fort stated that without assignee liability language this legislation would not address the root cause of the foreclosure crisis, and that if you do not have a remedy, you do not have a law. Sen. Fort also took issue with the flipping provision. Chairman Hamrick again reasserted his intent to add the flipping provision. He added that some debate had occurred indicating the provision was not needed because you can prosecute using fiduciary charges, but on the other hand the argument was why would you let them get away with flipping in the first place, and that was why he was reinserting

flipping language. Sen. Fort continued his testimony stating that there were people that came before this committee in 2002 that said they did not want or need a law and now they are the ones telling you how to fix the problem that gutting the original provisions caused. Sen. Fort said he would be skeptical taking their advice. Sen. Fort continued with a request that Sen. Steve Thompson's legislation, **SB 54**, be considered by the committee. Chairman Hamrick asked Sen. Fort to put himself in his position regarding assignee liability. Even advocates of assignee liability are concerned about adding that language because when the state of New York did something about it, Fannie Mae and Freddie Mac quit buying loans in New York. Chairman Hamrick's concern was that the same thing would happen here in Georgia, and he did not feel comfortable putting the state out on a limb. Sen. Fort argued against that point by stating that we do not need to listen to folk who tell you the capital markets will fall apart because the reality is that they already have. Chairman Hamrick recognized **Sen. Steve Thompson, 33<sup>rd</sup>**, who stated he appreciated the Chairman's position, and he was sure that Sen. Hamrick was not comfortable with some of the issues but he felt that he was doing a good job.

**NOTE:** Senators Tarver, 22<sup>nd</sup>, Goggans, 7<sup>th</sup>, and Murphy, 27<sup>th</sup>, left to attend another meeting.

Chairman Hamrick recognized **Robert Fowler** of the Georgia Financial Services Association to speak briefly to the bill. Mr. Fowler stated his overall support of the bill but urged caution on the flipping issue. Because of the lateness of the hour, and the fact that so many members of the committee had to leave for other committee meetings, Chairman Hamrick said that the hearing on **SB 57** would have to be continued at the next meeting.

**[SB 57 HEARING ONLY](#)**

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 4:05 p.m.

Respectfully submitted,

/s/ Senator Ed Tarver, 22<sup>nd</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE BANKING AND FINANCIAL INSTITUTIONS  
COMMITTEE**

**Wednesday, February 11<sup>th</sup>, 2009**

The Senate Banking and Financial Institutions Committee held its second meeting of the 2009 Session on Wednesday, February 11<sup>th</sup>, in room 125 of the Capitol. Chairman Bill Hamrick called the meeting to order at 2:00pm. Members present at the meeting were as follows:

Senator Bill Hamrick, 30<sup>th</sup>, Chairman  
Senator Ralph Hudgens, 47<sup>th</sup>, Vice Chair  
Senator Ed Tarver, 22<sup>nd</sup>, Secretary  
Senator John Bulloch, 11<sup>th</sup>  
Senator John Crosby, 13<sup>th</sup>  
Senator Greg Goggans, 7<sup>th</sup>, Ex-Officio

Senator Ed Harbison, 15<sup>th</sup>  
Senator Jeff Mullis, 53<sup>rd</sup>, Ex-Officio  
Senator Jack Murphy, 27<sup>th</sup>  
Senator Chip Pearson, 51<sup>st</sup>, Ex-Officio  
Senator Steve Thompson, 33<sup>rd</sup>

**NOTE:** Senators Rogers 21<sup>st</sup>, and Shafer, 48<sup>th</sup>, were absent from the meeting.

Chairman Hamrick called the meeting to order. The Committee Rules were read and Senator Hamrick asked if any member would like to make a motion on the adoption of the rules. Senator Bulloch made a motion to adopt the rules, and Senator Mullis seconded the motion. The vote was unanimous in favor of adoption of the rules.

**RULES ADOPTED**

The hearing on SB 57 continued.

**SB 57 (Hamrick, 30<sup>th</sup>) Georgia Fair Lending Act; definitions; provide for limitations on home loans; fees for filing documents**

**Chairman Bill Hamrick, 30<sup>th</sup>**, told the committee he had decided to break down **SB 57** into four different sections so that potential disagreement on one or two issues would not hold up passage of other parts of the legislation that could do some good now. The three new measures that were originally included in the legislation were now complementary bills as part of a legislative package. Chairman Hamrick introduced a substitute to **SB 57** which was drafted after the initial public hearing on the bill took place last week. The substitute narrowed down its mortgage broker definition and excluded Federal home loans from consideration as nontraditional loans. Chairman Hamrick reiterated that **SB 57** still targeted revision of the code regarding two mortgage loans that have caused massive amounts of foreclosures and decreasing home values: the option adjustable rate mortgage (ARM) and subprime credit loans. As stated during the first meeting this measure was aimed at properly defining these two loan structures and setting standards for how lenders can operate under those categories. Chairman Hamrick then summarized the three new bills that were originally part of **SB 57** that would now stand alone as separate legislation:

**SB 139 (Hamrick, 30<sup>th</sup>) Property; determining when an instrument of conveyance shall be held to be an equitable mortgage**

Senator Hamrick stated this legislation would essentially make foreclosure scams easier to undo by law.

**SB 140 (Hamrick, 30<sup>th</sup>) Property; writ of possession; provide tenant with a valid lease stay in a foreclosed property for 60 days; notice to the occupant of impending sale**

Senator Hamrick stated this legislation would allow tenants with a valid lease to remain in the foreclosed property for 60 days. The lender would also be required to provide written notice to the tenant informing them of the pending foreclosure.

**SB 141 (Hamrick, 30<sup>th</sup>) Property; foreclosures and deficiency judgements; change provisions**

Senator Hamrick stated that this legislation would impose a time limit of 30 days for purchasers of foreclosed properties to file deeds to the courts. Failure to comply would result in fines being imposed on the purchaser of up to \$7,500 for late filing.

After sharing this summary regarding the new legislation, Chairman Hamrick recognized **Eric Conklin**, representing The Georgia Family Council, to speak to the legislation. Mr. Conklin stated as a basic rule, they were not in favor of increased government regulation in private markets. Generally, they believed that people and businesses should have the freedom to make bad decisions and to fail, and that private markets assumed relative equality between buyer and seller in terms of knowledge or access to information. They also assumed the buyers' ability to take or leave the product being sold or the ability to choose between grades of a product like shopping at a discount store versus high end retail. However, they also felt that the mortgage market did not really fulfill either of these requirements in the truest sense. The buyer of mortgage products, in particular subprime products, had been at a relative disadvantage in terms of their knowledge about the product they were buying. Therefore, there was some need for the government to regulate the market to prevent the types of abuses seen and to limit the misuse of the advantage that those in the business have over consumers. Mr. Conklin continued stating that as their name Georgia Family Council suggests, they have had a particular focus on families. Their mission was to foster conditions in which individuals, families and communities could thrive. The collapse of the mortgage and housing industry had caused a lot of suffering. Since foreclosure represented the loss of the largest asset most families own, foreclosures tracked pretty closely to bankruptcy filings, and studies continued to show that financial problems are one of the leading causes of divorce. Because of these statistics, as expected, family breakdown would be especially high among this group. So, as an organization, Georgia Family Council supported reform through this legislation of the mortgage industry, particularly the subprime market because it would help limit the harm done to families by increasing their access to information about mortgage products, making the process more transparent, providing meaningful and timely disclosures, and setting the ethical framework by which the industry would operate.

Chairman Hamrick thanked Mr. Conklin for his testimony and stated that the hearing on **SB 57** and the other three bills would have to be continued at the next meeting.

**SB 57 HEARING ONLY**

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 2:47 p.m.

Respectfully submitted,

/s/ Senator Ed Tarver, 22<sup>nd</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE BANKING AND FINANCIAL INSTITUTIONS  
COMMITTEE**

**Wednesday, February 18<sup>th</sup>, 2009**

The Senate Banking and Financial Institutions Committee held its third meeting of the 2009 Session on Wednesday, February 18<sup>th</sup>, in room 125 of the Capitol. Chairman Bill Hamrick called the meeting to order at 2:05 pm. Members present at the meeting were as follows:

Senator Bill Hamrick, 30 <sup>th</sup> , Chairman	Senator Ed Harbison, 15 <sup>th</sup>
Senator Ralph Hudgens, 47 <sup>th</sup> , Vice Chair	Senator Jeff Mullis, 53 <sup>rd</sup> , Ex-Officio
Senator Ed Tarver, 22 <sup>nd</sup> , Secretary	Senator Jack Murphy, 27 <sup>th</sup>
Senator John Bulloch, 11 <sup>th</sup>	Senator Chip Pearson, 51 <sup>st</sup> , Ex-Officio
Senator John Crosby, 13 <sup>th</sup>	Senator Steve Thompson, 33 <sup>rd</sup>
Senator Greg Goggans, 7 <sup>th</sup> , Ex-Officio	

**NOTE:** Senators Rogers 21<sup>st</sup>, and Shafer, 48<sup>th</sup>, were absent from the meeting.

Chairman Hamrick called the meeting to order and stated that he would continue hearing commentary on the following bills:

**[SB 57](#) (Hamrick, 30<sup>th</sup>) Georgia Fair Lending Act; definitions; provide for limitations on home loans; fees for filing documents**

**[SB 139](#) (Hamrick, 30<sup>th</sup>) Property; determining when an instrument of conveyance shall be held to be an equitable mortgage**

**[SB 140](#) (Hamrick, 30<sup>th</sup>) Property; writ of possession; provide tenant with a valid lease stay in a foreclosed property for 60 days; notice to the occupant of impending sale**

**[SB 141](#) (Hamrick, 30<sup>th</sup>) Property; foreclosures and deficiency judgements; change provisions**

**[SB 131](#) (Hamrick, 30<sup>th</sup>) The Revised Georgia Trust Code of 2009; comprehensively revise provisions relating to trusts**

Senator Hamrick stated that he was going to continue discussion on **SB 57** and partner bills **SB 139**, **SB 140**, and **SB 141** but really wanted to get to **SB 131** concerning the revision of the Georgia Trust Code at this meeting. Chairman Hamrick then recognized **Sen. Steve Thompson, 33<sup>rd</sup>**, for a question regarding assignee liability in the original fair lending act, who wondered if assignee liability only applied to subprime loans. Sen. Steve Thompson said he hoped that someone would bring that issue up at the next meeting if he was unable to do so. Sen. Steve Thompson then excused himself from the meeting because he was not feeling well. Chairman Hamrick responded that Fannie Mae and Freddie Mac were basically the only lenders in the mortgage business right now, and when New York passed assignee liability legislation, Fannie and Freddie pulled out of New York. Chairman Hamrick

continued with the statement that subprime mortgages are 40% of foreclosures, and his conclusion was that if 12% of the mortgages were causing 40% of the foreclosures, then subprime loans were the problem. That was the particular issue that SB 57 was drafted to address.

**Note:** Sen. Thompson, 33<sup>rd</sup>, left the meeting.

Chairman Hamrick acknowledged **Bill Brennan**, Atlanta Legal Aid, for comment. Mr. Brennan stated that one of his main concerns was that people were given loans that they could not possibly repay. Also, the addition of assignee liability was essential to making the bill work because it would provide an enforcement mechanism that would acknowledge the right of a homeowner to sue the current holder of the mortgage. Mr. Brennan further stated that it was the national banks that now owned the mortgages that were foreclosing. Currently, attorneys were forced to bring common-law claims against the national banks but it would be much easier to win a case with assignee liability. Mr. Brennan stated in his opinion if a law protected against predatory conduct but was unenforceable against current holders of the loan, then it would do no good. Mr. Brennan stated that the fear that Fannie Mae and Freddie Mac would pull out of Georgia was illogical because the purpose of the bill was to prevent toxic loans from being bought, and that Fannie and Freddie should not buy such loans in the first place. In fact, they had an elaborate system for purchasing loans that required staff to look at loans to make sure that all requirements were complied with. Chairman Hamrick asked Mr. Brennan if it were possible to sue the current holder of a mortgage now. Mr. Brennan stated that it was possible to sue now under conspiracy, but it was a battle with opposing counsel fighting them tooth and nail on theories and common law. Chairman Hamrick asked how assignee liability would make a difference in what they were currently doing and if this would just merely make it easier to win a lawsuit. Mr. Brennan stated that it would indeed make things easier because at present they had to argue that all parties were engaged in conspiracy to defraud and show there was a violation of the law. Mr. Brennan stated again that this was an enforcement issue and that adding assignee liability would not encourage litigation but would instead be a discouragement of bad behavior on the buyer end. Chairman Hamrick asked why it was necessarily a bad thing to have to prove conspiracy and stated further that maybe that was a good thing that you had to show that purchasers of mortgages conspired to violate the law. Chairman Hamrick stated that he and the members of the committee were really trying to understand how assignee liability would change the current legal environment. Mr. Brennan said that under normal operating practices loans were filtered according to the underwriting standards of the originator. Many of the companies purposely buy poorly backed securities, and then nearly went out of business because the loan pools had so many nonperforming loans. Mr. Brennan continued with the comment that adding assignee liability would not be an absolute, automatic liability. They would only be liable if loans were bought in violation of GFLA. The common law they were currently forced to sue under was not as good as straight liability.

Chairman Hamrick recognized **Sen. Jack Murphy, 27<sup>th</sup>**, who asked why a bank would make a loan they knew would not be repaid. Mr. Brennan responded that the securitization system was basically a Ponzi scheme that provided incredible profits until it failed. There were fees

of hundreds of millions of dollars for various services by collectors, ratings agencies, investors that bought subprime mortgage-backed securities. Sen. Murphy then asked Mr. Brennan what exactly he wanted the Banking Committee to do. Mr. Brennan stated that he wanted the committee to make it illegal to give bad loans, and to make the buyers of the loans, not just the originator, liable. Chairman Hamrick again stated that the buyers could be sued now. Mr. Brennan again reiterated that it was more difficult to sue under common law theories such as conspiracy, or aiding and abetting. Chairman Hamrick asked if assignee liability made the bank as liable as the originator on the same statutory provision and Mr. Brennan confirmed that it did. He also stated that as a practical matter the system going forward would fix itself as they would be compelled to check on the loans they were buying beforehand. Mr. Brennan stated that we have assignee liability with the federal Truth in Lending Act (TILA), and it was a good example of how very effective assignee liability was in keeping banks from violating the law. There were very few suits regarding the TILA, however, assignee liability was only a disclosure law on the federal level and did not completely prohibit abusive conduct. Still, there were fewer violations because there was a means for execution to sue to rescind the loan or work out a settlement to reduce the balance.

Again, Mr. Brennan stated that his goal was not to encourage lawsuits but to encourage the industry to stop making bad loans. Chairman Hamrick stated that he felt that assignee liability would be best regulated at the federal level because he had a problem with doing it on a state-by-state basis. He felt it would put Georgia at a disadvantage if we passed it first. Again, Mr. Brennan stated that if you passed this bill to make predatory lending illegal, but did not add assignee liability, it would not be effective because companies would pass on responsibility.

Chairman Hamrick suspended testimony on **SB 57** to allow **Judge Gary Jackson** to speak on **SB 141** because time was running short and the Judge had to get back to court. Judge Jackson stated that he was there as an individual and not in his official capacity as the only building code violation judge in Atlanta Municipal Court. He stated that urban blight was increasing and gave examples from his time in the office. Judge Jackson stated that just that morning he received a foreclosure letter that said they would foreclose in April on a property but apparently the bank did not go through with the foreclosure. The debtor would not know that because there was no required notice for actual foreclosure. He stated that it would be a tremendous help to have language in the bill stating that if you threaten to foreclose, you must tell the tenant and occupant whether or not you have actually foreclosed. Judge Jackson also stated that they spent the bulk of their time discovering who actually owns the property. Chairman Hamrick said that he would be willing to see if they could figure out some language to cover these issues. Judge Jackson thanked the committee for their time, and then left for court. Chairman Hamrick then called on **Kimber Doran** who spoke briefly in favor of **SB 141**. Ms. Doran shared her personal experience with foreclosure and stated she felt that prompt deed filing and notification were essential to aide those people who find themselves in the same situation.

Chairman Hamrick returned the topic of assignee liability and further testimony on **SB 57**. He recognized **Sen. John Crosby, 13<sup>th</sup>**, with questions. Sen. Crosby asked since there were defenses available to the first transaction and not available against assignee, what would you do at the front end to solve the problem rather than trying to solve the problem at the back

end. Mr. Bill Brennan responded that **SB 57** did much to stop it at the front end of the process by making certain practices illegal, but the originators of the loans often tended to be fly-by-night companies that made loans, sold them, and then disappeared. Sen. Crosby followed with another question asking if a law was passed that applied to anyone giving loans in Georgia, would there not be some good lenders in Georgia that get hurt because of sue-happy people. Mr. Brennan responded that good companies would not be hurt because good companies would not violate the law. Chairman Hamrick asked Mr. Brennan if it was currently illegal to make a loan without regard to ability to repay. Mr. Brennan stated that there was a licensing law with a list of prohibitions. Chairman Hamrick wondered if making sure that companies did not make or buy bad loans would prevent them from making any loans at all. Mr. Brennan asked what was wrong with a concept that said you should not make bad loans. Chairman Hamrick stated we all agree that companies should not make bad loans period, but there needs to be a balance. Chairman Hamrick wondered if Georgia were the one state to pass a law with assignee liability, if companies would state that they would not risk buying bad mortgages and being liable, and end up not buying any mortgages at all. Mr. Brennan stated that there were companies that could handle due diligence and do it right. Chairman Hamrick asked if there was any other state other than New York with assignee liability, and Mr. Brennan stated that he would have to look into that question. Mr. Brennan said that he would question the integrity of companies that threaten to leave if assignee liability was passed as companies who were apparently predatory in their business practices. Chairman Hamrick still felt that the problem that the committee was facing was if we passed legislation with assignee liability what would stop companies from not even taking a chance in Georgia since they would have 49 other states to buy loans from.

Chairman Hamrick recognized **Sen. Jack Murphy, 27<sup>th</sup>**, for a question. Sen. Murphy asked whether this was a federal problem and Mr. Brennan confirmed that it was. Sen. Murphy continued with the thought that the committee was being asked to solve a federal issue on a state level. Mr. Brennan replied that the state did not necessarily create the problem by gutting the **Georgia Fair Lending Act**, but they certainly had failed to address the problem created by the federal government when they decided to stop regulating financial institutions. Chairman Hamrick stated that the current statute does solve part of the problem.

The Chairman then continued with hearing testimony and called on **Kelly Pridgen** who spoke briefly in favor of the legislation for the ACCG. In particular, Ms. Pridgen addressed her comments in favor of **SB 57** and **SB 141** because these bills addressed code enforcement issues and problems with vacant lots that county officials deal with.

Chairman Hamrick acknowledged **Sen. Greg Goggans, 7<sup>th</sup>**, who asked if there was anyone who could give opposing testimony on the assignee liability issue. Chairman Hamrick recognized **Richard Raymer**, counsel for the Mortgage Bankers Association of Georgia, who stated that all the talk on assignee liability was like beating a dead horse. Mr. Raymer felt that what needed to be done was to stop bad loans at the source and keep them from being made. He believed that adding an assignee liability component to the legislation would restrict the flow of funds into Georgia because most loans are not made in Georgia and come through outside sources. Mr. Raymer continued stating that no one was buying nontraditional loans now because the market had corrected itself. In this type of financial environment, investors could not afford to run the risk of buying these types of loans, and the reason for these types of loans in the beginning was due to thinking that if people were about to foreclose, they could still sell the home at a profit with the continued rise in the market at that time. Mr. Raymer stated that federal law would address the problems and the problems should be addressed at that level.

**Note:** Senators Pearson, Bulloch and Mullis left to attend another meeting.

**Sen. Vincent Fort** asked to speak. Chairman Hamrick stated that it was pretty clear where Sen. Fort stood on the issue, but gave Sen. Fort permission to address the committee briefly. Sen. Fort stated that as a historian he did not like it when people revised history. The market only corrected itself after about 5 million foreclosures and political devastation of the last two years. To be accurate, the market did not correct itself, it imploded. Sen. Fort continued stating that some people got into a mess by themselves and he did not have time for them, but the people he personally dealt with on a daily basis were those who had been victimized. Sen. Fort recalled that someone asked the question would a mortgage company make a loan they could not be repaid earlier. Sen. Fort stated the answer to that question was yes because they knew they could pass the bad loan to someone else. Chairman Hamrick stated that this still sounded like a wonderful opportunity for the federal government to get involved. Sen. Fort pointed out to the committee that there were state laws against murder even though there were also federal laws that address that type of crime. With that statement, Sen. Fort excused himself from the meeting and Chairman Hamrick adjourned for a five minute break.

The remaining members of the committee returned from break. Chairman Hamrick stated his intention to hear testimony on **SB 131** and called on **Dr. Mary Radford** from the Georgia State College of Law who was joined by her colleagues **Bill Linkas** and **Nick Dejerg**. Dr. Radford stated that they had taken over five years to revise the Georgia Trust Code. They had spent much of that time comparing the Georgia Trust Code with the Federal Uniform Trust Code, and had adopted a code that combined the best of both. **SB 131** would completely repeal and replace the current Title 53, Chapter 12 of the O.C.G.A with the **“Revised Georgia Trust Code of 2009.”** The following summary of **SB 131** was shared with the committee:

Changes to Georgia's Trust Code included, but were not limited to:

#### Creation and Validity of Trusts

- Added statutes that clarify which state's laws apply in decisions relating to the validity of a trust and the meaning and effect of trust terms. (OCGA §§ 53-12-5 & 53-12-6).
- Added provision that allows an agent under a power of attorney to create a trust for the principal if the power of attorney expressly authorizes the agent to do so. (OCGA § 53-12-20)
- Clarified that a transfer of legal title of property be made to the trustee in order for property to become trust property. (OCGA § 53-12-25)
- Provides that a trust has a "reasonably ascertainable beneficiary" if the trustee or some other person has the power to select the beneficiaries based on a standard or in the discretion of that person. (OCGA § 53-12-20)
- Added a definition of "qualified beneficiaries. These beneficiaries are qualified to notice in more circumstances than are contingent beneficiaries." (OCGA § 53-12-2) (See, e.g., OCGA § 53-12-65, notice as to existence of trust)
- Allowed a settlor to create a trust for animals (e.g., pets). (OCGA § 53-12-28)
- Imported from Georgia's probate code the provision that describes the effect of an "in terrorem" ("no contest") clause in a trust. (OCGA § 53-12-22)
- Clarified that a trust will not be considered to be revocable merely because the life beneficiary has a reversion in or a power of appointment over assets of the trust or because the life beneficiary's heirs or estate have a remainder interest. (OCGA § 53-12-44)

#### Modification and Termination of Trusts

- Allowed for reformation of a trust by court to correct mistakes. (OCGA § 53-12-60)
- Added more detailed provisions relating to modification of administrative and dispositive terms of trust by court. (OCGA 53-12-62)
- Clarified when a settlor's agent or conservator can modify a revocable trust. (OCGA § 53-12-23)
- Added a provision for the termination of "uneconomic trusts" (trusts of less than \$50,000 of which trustee's fee is 5% or more) (OCGA § 53-12-65)

#### Revocable Trusts, Spendthrift Trusts, & Creditors' Rights

- Added provisions that explain creditors' rights against interest of settlor in a revocable or irrevocable trust, both during settlor's life and at settlor's death. (OCGA § 53-12-80)
- Spendthrift Trusts: Kept current Georgia law except that tort judgment creditors may no longer reach a beneficiary's interest in a spendthrift trust. (OCGA § 53-12-80)

### Notification of Existence of Trust

- Provided that within 60 days after the date of creation of an irrevocable trust or of the date on which a revocable trust becomes irrevocable, the trustee must notify the qualified beneficiaries of the trust of the existence of the trust and the name and mailing address of the trustee. (OCGA § 53-14-82).
- This requirement could be waived by the settlor of the trust and all irrevocable trusts in existence on the date the new Trust Code becomes effective will be deemed to have waived this requirement.

### Statutes of Limitations

- Provided that any judicial proceeding to contest the validity of a trust that was revocable at the settlor's death must be commenced within two years of the settlor's death. (OCGA § 53-12-45).
- Added statutes that change the statute of limitations for bringing actions for breach of trust to two years from the date a beneficiary has received a written report that adequately discloses the existence of a claim against the trustee for breach of trust; in all other cases, six years after the beneficiary discovered, or reasonably should have discovered, the subject of the claim. (OCGA § 53-14-150).

### Trustee Compensation

- Changed trustee compensation statute to provide with respect to a corporate trustee, its published fee schedule provided such fees are reasonable under the circumstances. (OCGA § 53-14-20).
- Provided for individual trustees, unless the settlor specifies otherwise, a compensation schedule that includes 1% of the value of the trust property upon initial funding of the trust and an annual fee ranging from 1.75% to .50% per year, with the lower percentages applying to the larger trusts. (OCGA § 53-14-20).

### Powers of Trustees

- Provided that a trustee automatically has a broad range of powers to deal with trust property, unless the settlor limits those powers. (OCGA §§ 53-14-30 & 53-14-38).

### Trust Certification

- Allowed trustee to give a certification of trust rather than entire trust document to all who request to see the trusts, except trust beneficiaries, who must be given the entire document. (OCGA § 53-14-130).

### Investment of Trust Assets

- Described a trustee's duties with relation to managing the risk of concentrated holdings. (OCGA § 53-15-3).
- Allowed for the creation of a unitrust (OCGA § 53-15-22).
- Replaced the Georgia Principal and Income Act with the most recent version of the Uniform Principal and Income Act (Ch. 15, Art. 2)

Chairman Hamrick recognized **Judy Newberry** from the Georgia Department of Banking who stated that they supported the revision with one small amendment on page 68 regarding the definition of a foreign entity. They requested that a change be made to Section B to remove and replace with current statute which addressed banking and other institutions in neighboring states. Chairman Hamrick stated that since the committee had lost its quorum due to the lateness of the hour, a vote on [SB 131](#) and the other bills would take place at the next meeting.

**HEARING ONLY ON ALL BILLS**

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 3:58 p.m.

Respectfully submitted,

/s/ Senator Ed Tarver, 22<sup>nd</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE BANKING AND FINANCIAL INSTITUTIONS  
COMMITTEE**

**Wednesday, February 25<sup>th</sup>, 2009**

The Senate Banking and Financial Institutions Committee held its fourth meeting of the 2009 Session on Wednesday, February 25<sup>th</sup>, in room 125 of the Capitol. Chairman Bill Hamrick called the meeting to order at 3:50 pm. Members present at the meeting were as follows:

Senator Bill Hamrick, 30 <sup>th</sup> , Chairman	Senator Ed Harbison, 15 <sup>th</sup>
Senator Ralph Hudgens, 47 <sup>th</sup> , Vice Chair	Senator Jack Murphy, 27 <sup>th</sup>
Senator Ed Tarver, 22 <sup>nd</sup> , Secretary	Senator David Shafer, 48 <sup>th</sup>
Senator John Bulloch, 11 <sup>th</sup>	Senator Steve Thompson, 33 <sup>rd</sup>
Senator John Crosby, 13 <sup>th</sup>	
Senator Greg Goggans, 7 <sup>th</sup> , Ex-Officio	

**NOTE:** Senators Mullis, 53<sup>rd</sup>, Pearson, 51<sup>st</sup>, and Rogers, 21<sup>st</sup>, were absent from the meeting.

Chairman Hamrick brought the meeting to order.

**SB 131 (Hamrick, 30<sup>th</sup>) The Revised Georgia Trust Code of 2009; comprehensively revise provisions relating to trusts**

**Chairman Hamrick**, author of this legislation, recognized **Professor Mary Radford** again from Georgia State University's College of Law who spoke briefly regarding the substitute for **SB 131** brought before the committee. Dr. Radford explained that this legislation, written by the State Bar of Georgia Fiduciary Law Section, would completely repeal and replace the current Title 53, Chapter 12 of the O.C.G.A. with the "Revised Georgia Trust Code of 2009." This legislation modernized Georgia's trust laws and made them similar to most other states that have adopted the Model Trust Code. This was the second meeting where this bill was on the agenda and Dr. Radford discussed the evolution of trust laws and the three years the State Bar spent working on revising the Trust Code. The Georgia Department of Banking was consulted during the process since most trustees were financial institutions and **SB 131** contained one change as requested by the Georgia Department of Banking in the last meeting which addressed the definition of foreign entity. The section regarding that definition was removed and replaced with current statute so that the definition addressed banking and other institutions in neighboring states. Also, a major change that many Georgians had expressed an interest in was added to the legislation which would give one the ability to create a trust for a pet under the new Trust Code. After this brief explanation of the legislation the committee was ready to vote. There was no opposing testimony. Sen. Steve Thompson, 33<sup>rd</sup>, moved **SB 131 Do Pass by Substitute**. Sen. Ralph Hudgens, 47<sup>th</sup>, seconded the motion. **SB 131** passed by substitute unanimously 9 to 0.

**SB 131 Do Pass by Substitute**

**Note:** Senator Goggans, 7<sup>th</sup>, arrived at the meeting. Senator Thompson, 33<sup>rd</sup>, left the meeting.

### **SB 141 (Hamrick, 30<sup>th</sup>) Property; foreclosures and deficiency judgments; change provisions**

**Chairman Hamrick**, author of this legislation, offered a substitute for **SB 141** which would require timely filing for foreclosure deeds, notice to residents and fees for late registration. Chairman Hamrick stated that he incorporated a few changes following the testimony given by the Mayors and the Judge that addressed the committee last week. They all testified that unrecorded deeds were causing major problems for cities and counties trying to enforce code ordinances because nobody was able to find who owned the property after the foreclosure sale, and chaos often resulted in court from not knowing who owned a derelict property. In the original legislation, deeds under the power of sale and deficiency judgments must be recorded within 30 days. Failures to record the deed would result in a late filing penalty, and that stayed the same in the substitute, but Chairman Hamrick adjusted the fees for non-compliance to a more reasonable rate. Originally, the late fee for more than 90 days was \$10,000, which was supported by the Georgia Municipal Association. The banking and lending industry lobbyists disagreed with the fees in the original legislation because they were too high and concern was expressed by Sen. Steve Thompson, 33<sup>rd</sup>, that fees were too high for unsophisticated buyers purchasing property at foreclosure. The substitute allowed for fees of \$250, \$500, and \$5000 for 30, 60, and 90 days respectively. Chairman Hamrick stated that the substitute legislation was a compromise which addressed these concerns. Additionally the substitute required that a notice be sent to a tenant living in a property about to be foreclosed upon to inform them that they may have legal rights via regular mail. Chairman Hamrick recognized **Sen. Ed Tarver, 22<sup>nd</sup>**, who asked what the impact was on the creditor if they failed to send the notice. Chairman Hamrick stated if he were a bank who was challenged on whether or not a notice was sent in a timely fashion then he would stop the foreclosure and send the notice as required. Having already heard testimony on the legislation at the last meeting, the committee was ready to vote on the legislation. Sen. Jack Murphy, 27<sup>th</sup>, moved **SB 141 Do Pass by Substitute**. Sen. David Shafer, 48<sup>th</sup>, seconded the motion. **SB 141** passed by substitute unanimously 8 to 0.

### **SB 141 Do Pass by Substitute**

### **SB 57 (Hamrick, 30<sup>th</sup>) Georgia Fair Lending Act; definitions; provide for limitations on home loans; fees for filing documents**

Chairman Hamrick, author of this legislation, stated that he discovered some research since the last meeting that used Georgia as an example of what happened when assignee liability was enacted in 2002 as part of predatory lending legislation, prior to it being amended in 2003. This research persuaded him all the more that if assignee liability was going to apply to Georgia then it needed to apply to every state. Assignee liability needed to be addressed at the federal level. Chairman Hamrick offered a substitute to **SB 57** which tightened the Fair Lending Act for subprime loans, but did not contain any assignee liability language. Chairman Hamrick stated he made this decision, after three meetings with this bill on the agenda in which multiple groups were heard from, including mortgage brokers, representatives of loans servicers, Atlanta Legal Aid, and consumer advocates as well as Senator Vincent Fort. The major source of contention was assignee liability, but most everyone was in agreement that most of the bad loans involved in the foreclosure crisis were subprime. Because the potential effect of assignee liability was that nobody would purchase loans made in Georgia which would further tighten credit markets, Chairman Hamrick chose to focus the language in **SB 57** on the area where there was agreement. He also mentioned that the federal government was also considering assignee liability for entities involved in unfair and predatory loans, which would provide a level playing field. Since most subprime loans were delivered to people through a mortgage broker, he tried to narrow the legislation down even further to impact only those situations where a person was being sold a product they did not need based on the needs of the broker

or lender. This legislation defines mortgage broker's duties as the representative of the borrower, defines subprime loans, places limitations on subprime loans and prevents prepayment penalties on subprime loans. For example, mortgage brokers could not get paid based on yield spread, because that was an incentive for the broker to sell a high-cost loan to someone who may qualify for a lower cost loan. This legislation would require that a loan be made not on the lender's ability to recoup but on the buyer's ability to repay. Basically, **SB 57** would make it clear that brokers should have the borrower's best interests in mind.

**Note:** Sen. Steve Thompson, 33<sup>rd</sup>, returned to the meeting.

Chairman Hamrick recognized **Sen. Steve Thompson, 33<sup>rd</sup>**, for a question. Sen. Steve Thompson stated that he disagreed on the amount of trouble in the market being mostly the fault of subprime loans. Sen. Steve Thompson felt that in this economy we were going to experience more and more people in traditional loans having trouble. Sen. Steve Thompson also wanted the committee to know that he had been told that Fannie Mae and Freddie Mac had not pulled out of New York, and added that it still did not make sense that someone who bought a loan could not be held responsible for the terms of the loan. In his humble opinion, Sen. Steve Thompson still believed that adding assignee liability would send the right message to Georgia. Even though he was sure he would be defeated, at the proper time he wanted to offer an amendment adding the following language for consideration: "Notwithstanding any other provision of law, any person who purchases or is otherwise assigned a nontraditional home loan or subprime home loan shall be subject to all affirmative claims and any defenses with respect to the loan that the borrower could assert against the original creditor or creditors of the loan." Chairman Hamrick stated given that today's lending environment was so precarious, he would be amazed if a bill that included language for assignee liability made it all the way through the legislature, but out of respect for Sen. Steve Thompson he recognized his motion to amend **SB 57**. Sen. Ed Harbison, 15<sup>th</sup>, seconded the motion. Sen. Steve Thompson's amendment failed 5 to 4 with Chairman Hamrick being the deciding vote against the amendment

**Note:** Yeas were Senators Harbison, Tarver, Steve Thompson and Hudgens. Nays were Senators Hamrick, Bulloch, Crosby, Goggans, and Murphy.

**Note:** Senator Shafer left the meeting before the vote to attend another meeting.

Chairman Hamrick determined the committee was ready to vote on the legislation and asked for a motion. Sen. John Bulloch, 11<sup>th</sup>, moved **SB 57 Do Pass by Substitute**. Sen. Jack Murphy, 27<sup>th</sup>, seconded the motion. **SB 57** passed by substitute unanimously 8 to 0.

### **SB 57 Do Pass by Substitute**

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 4:18 p.m.

Respectfully submitted,

/s/ Senator Ed Tarver, 22<sup>nd</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE BANKING AND FINANCIAL INSTITUTIONS  
COMMITTEE**

**Monday, March 9<sup>th</sup>, 2009**

The Senate Banking and Financial Institutions Committee held its fifth meeting of the 2009 Session on Monday, March 9<sup>th</sup>, in room 123 of the Capitol. Chairman Bill Hamrick called the meeting to order at 11:30 a.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30<sup>th</sup>, Chairman  
Senator Ed Tarver, 22<sup>nd</sup>, Secretary  
Senator John Bulloch, 11<sup>th</sup>

Senator John Crosby, 13<sup>th</sup>  
Senator Jack Murphy 27<sup>th</sup>  
Senator Chip Rogers, 21<sup>st</sup>

**NOTE:** Senators Hudgens, 47<sup>th</sup>, Goggans, 7<sup>th</sup>, Harbison, 15<sup>th</sup>, Mullis, 53<sup>rd</sup>, Pearson, 51<sup>st</sup>, Shafer 48<sup>th</sup>, and Thompson, 33<sup>rd</sup>, were absent from the meeting.

Chairman Hamrick brought the meeting to order, and called on Senator Tarver to present his legislation.

**SB 249 (Tarver, 22<sup>nd</sup>) Levy/Sale; change nonbankruptcy exemptions**

**Senator Ed Tarver, 22<sup>nd</sup>**, author of **SB 249**, stated that this legislation would change Georgia's bankruptcy homestead exemption and provisions that were in conflict with federal law. This legislation was the result of a Senate Study Committee that looked at Georgia's Homestead Exemption for bankruptcy purposes, and would change Georgia's exemptions for sale and levy as well as update certain sections of the Georgia Code that were disjunctive with federal law. The nonbankruptcy homestead exemptions for levy and sale would now match the bankruptcy homestead exemption. Under this legislation, the homestead exemption for bankruptcy and intestate insolvent estates would be limited to \$20,200.00 in value, in real property or personal property that the debtor or dependent of the debtor used as a residence, and in a burial plot for the debtor or dependent of a debtor. In the event title to property used for the exemption there were one or two spouses who were debtors, the amount of the exemption would be \$40,400.00. Additionally, this legislation conformed Georgia's domicile provisions for bankruptcy purposes and provisions for exempt balances in qualified retirement accounts to changes in the Federal Bankruptcy Code in 2005. Senator Tarver had introduced legislation to raise the exemption amount to \$100,000, but after this study felt that the exemption should instead be raised to the federal amount of \$20,200/\$40,400, which was significantly lower than prior legislation he had introduced. Senator Tarver felt the incentive to file bankruptcy in Georgia for homeowners would be eliminated by making the nonbankruptcy exemption the same as the bankruptcy exemption. After recognizing Sen. Bulloch, 11<sup>th</sup>, and Sen. Crosby, 13<sup>th</sup>, who asked a few clarifying questions of Senator Tarver, Chairman Hamrick felt the committee was ready to take a vote. Sen. John Bulloch, 11<sup>th</sup>, moved **SB 249 DO PASS**. Sen. John Crosby, 13<sup>th</sup>, seconded the motion. **SB 249** passed unanimously 5-0

**SB 249 DO PASS**

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at Noon.

Respectfully submitted,

/s/ Senator Ed Tarver, 22<sup>nd</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

**MINUTES OF THE SENATE BANKING AND FINANCIAL INSTITUTIONS  
COMMITTEE  
Wednesday, March 18<sup>th</sup>, 2009**

The Senate Banking and Financial Institutions Committee held its sixth meeting of the 2009 Session on Wednesday, March 18<sup>th</sup>, in room 125 of the Capitol. Vice Chairman Ralph Hudgens, 47<sup>th</sup>, called the meeting to order at 2:00 p.m. Members present at the meeting were as follows:

Senator Bill Hamrick, 30 <sup>th</sup> , Chairman	Senator John Crosby, 13 <sup>th</sup>
Senator Ralph Hudgens, 47 <sup>th</sup> , Vice Chair	Senator Greg Goggans, 7 <sup>th</sup> , Ex-Officio
Senator Ed Tarver, 22 <sup>nd</sup> , Secretary	Senator Ed Harbison, 15 <sup>th</sup>
Senator John Bulloch, 11 <sup>th</sup>	Senator Jeff Mullis, 53 <sup>rd</sup> , Ex-Officio
	Senator David Shafer, 48 <sup>th</sup>

**NOTE:** Senators Murphy, 27<sup>th</sup>, Pearson, 51<sup>st</sup>, Rogers, 21<sup>st</sup>, and Thompson, 33<sup>rd</sup>, were absent from the meeting.

Vice Chair Hudgens called on Rep. Calvin Hill to present **HB 312**.

**Note:** Chairman Bill Hamrick, 30<sup>th</sup>, arrived after presenting a bill in another committee.

**HB 312 (Hill, Calvin 21<sup>st</sup>) Financial institutions; S.A.F.E. Mortgage Licensing Act of 2008; incorporate provisions**

**Rep. Calvin Hill, 21<sup>st</sup>**, author of **HB 312**, presented a substitute to the committee and explained that this legislation would enact the S.A.F.E. Mortgage Licensing Act of 2008. HUD required that all states adhere to the provisions of the federal S.A.F.E. Mortgage Licensing Act by July 2009 and this bill would codify the licensing process here in Georgia. Rep. Hill concluded that the bill specified how mortgage loan originators would be licensed and monitored, set forth the licensing requirements, specified certain continuing education requirements, and put Georgia in compliance with federal law. The following important points regarding **HB 312** were shared with the committee:

- Defined the “mortgage loan originator” as an individual who for compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan, with certain exceptions.
- Required individuals desiring to engage in the business of a mortgage loan originator to obtain a license or registration and a unique identifier and required such identifying number to be displayed on all loan application forms, solicitations, advertisements, etc.
- Provided an implementation date of January 1, 2009 for licensing of mortgage loan originators.
- Added relevant licensing requirements as well as provisions for renewal and revocation of such licenses.
- Authorized adding mortgage loan originators to the automated nationwide licensing system and registry previously authorized by the General Assembly for mortgage brokers and mortgage lenders.

- Clarified that any education provider that offers mortgage industry related courses designed to satisfy education requirements must be approved by the Department of Banking. (the Department)
- Clarified and separated in relevant areas the requirements that apply to mortgage brokers and mortgage lenders and those requirements that apply to all licensees, including mortgage loan originators.
- Authorized the Department to conduct investigations and examinations of mortgage loan originators and authorized the Department to take into account Nationwide Mortgage Licensing System and Registry fees in setting appropriate licensing fees.
- Established that the prohibited acts provision and the disclosure requirements were applicable to mortgage loan originators.

Chairman Hamrick recognized Sen. Ralph Hudgens, 47<sup>th</sup>, who made a motion for one small amendment to the bill that struck a definition of “servicer” that was no longer needed. Senator Ed Harbison, 15<sup>th</sup>, seconded the motion. The amendment was passed unanimously by the committee 8-0. Chairman Hamrick then asked for a motion on the bill. Sen Ralph Hudgens, 47<sup>th</sup>, moved ***HB 312 Do Pass by Substitute*** as amended. Sen. Ed Harbison, 15<sup>th</sup>, seconded the motion. ***HB 312*** was passed unanimously by substitute as amended 8-0. Chairman Hamrick stated that he would be the Senate sponsor of this legislation.

**[HB 312 Do Pass by Substitute](#)**

**Note:** Sen. Shafer, 48<sup>th</sup>, left to attend another meeting.

**[HB 141](#) (Mills, James 25<sup>th</sup>) **Financial institutions; update definitions; provisions****

Chairman Hamrick recognized **Rep. James Mills, 25<sup>th</sup>**, to present ***HB 141*** which was the annual housekeeping legislation for the state Department of Banking. ***HB 141*** addressed several issues regarding the regulation of financial institutions and commercial paper in Georgia. Chairman Hamrick recognized **Rob Braswell**, Commissioner for the Department of Banking to speak to the legislation. The following summary of proposed amendments was shared with the committee:

**A. Financial Institutions**

**Article 1 - Provisions Applicable to Department of Banking and Finance and Financial Institutions Generally; Part 1 - Purposes and Preliminary Matters**

**§7-1-4(24)**

A proposed amendment to redefine "net assets" in order to address the valuation effects of goodwill or other intangibles related to the purchase, acquisition, or merger of a bank charter. This change follows a similar change made in 2006 to the definition of "statutory capital base."

**Article 1 - Provisions Applicable to Department of Banking and Finance and Financial Institutions Generally; Part 3 - Operations of Department of Banking and Finance**

**§7-1-68**

A proposed amendment to clarify that the failure of a financial institution to provide any facts or information required by this section will result in a financial penalty.

**Article 1 - Provisions Applicable to Department of Banking and Finance and Financial Institutions Generally; Part 4 - Proceedings Involving the Department of Banking and Finance**

**§7-1-91**

A proposed amendment to clarify that enforcement remedies available to the Department in this section can be exercised against bank holding companies, as well as financial institutions. This suggestion for a statutory change originated during a department audit conducted by the Conference of State Bank Examiners.

**Article 2 – Banks and Trust Companies; Part 1 – General Matters**

**§7-1-243**

A proposed amendment to clarify that no person shall be authorized to hold themselves out as conducting the business of a credit union unless they are in fact a credit union. This section currently contains specific protections for banks and trusts.

**§7-1-285**

Currently language in §7-1-285(b) reads: “In estimating loans to any individual person, all amounts loaned to firms and partnerships of which he is a member shall be included.” A proposed amendment provides the following language change “in estimating the legal lending limit for any individual person, loans to related corporations, partnerships and other entities will be combined subject to rules established by the department.”

**Article 2 – Banks and Trust Companies; Part 11 - Dividends, Distributions, and Preferred Share Acquisition.**

**§7-1-460**

A proposed amendment to provide an exemption of the payment of dividends by a Sub Chapter S bank, prior to cumulative profitability, for the sole purpose of providing its shareholders with a source of funds to pay federal and state income taxes on the bank's income that is taxable to those shareholders. The department would have to approve such dividends.

**B. Article 3 - Credit Unions; Part 2 – Operation and Regulation**

**§7-1-651**

A proposed amendment to decrease the minimum par value of credit union member shares from \$5.00 per share to \$1.00 per share. The effect of this proposed change would provide parity for state chartered credit unions with federal credit unions.

## **C. Article 4 – Sale of Checks or Money Orders**

### **§7-1-684.1**

Amendments have been proposed to provide the department with enhanced authority to conduct investigations; authorize the sharing of confidential information with other state and federal regulatory agencies and law enforcement authorities; allow specified non-confidential information to be made available to the public; and prevent individuals who in good faith make complaints to the department and agency personnel that handle them from being subject to civil liability. These powers correspond to the same authority the department exercises for mortgage lenders and brokers.

### **§7-1-685**

The department proposes to delete the provision that allows a license for which a renewal application has been timely filed to remain in effect until 20 days after this agency refuses to renew it.

### **§7-1-686**

An amendment is proposed to clarify that a licensee can provide required notice on or before statutory required dates.

### **§7-1-687.1**

An amendment is proposed which requires a licensee to retain copies of all Currency Transaction Reports that it is required to file and, for money transmitters, to maintain records of money sent and/or received.

### **§7-1-689.2**

A proposed new section which provides that the department may not issue a license to an applicant or may revoke a license from a licensee if such person employs any other person against whom a final cease and desist order has been issued within the preceding five years for a violation of this article. The amendment further requires that applicants and licensees examine the public records of the Department to make sure any prospective employee is not subject to such an order.

### **§7-1-692**

A proposed amendment which would require a licensee or agent to transmit monies received by them within five business days or sooner if called for under the terms of an agent's agreement. Failure to do so shall result in fines and the designation of the agent being refused or suspended.

## **D. Article 4A - Cashing Checks, Drafts, or Money Orders for Consideration.**

### **§7-1-703**

Proposed changes make those holding registrations subject to this section. The department also proposes to delete the provision that allows a license for which a renewal application has been timely filed to remain in effect until 20 days after this agency refuses to renew it.

### **§7-1-704**

Amendments have been proposed to provide the department with enhanced authority to conduct investigations; authorize the sharing of information with other state and federal regulatory agencies and law enforcement authorities; allow specified non-confidential information to be made available to the public; and prevent individuals who in good faith make complaints to the department and agency personnel that handle them from being subjected to civil liability. These powers correspond to similar authority the department exercises for mortgage lenders and brokers.

### **§7-1-707.2**

A proposed new section which provides that the department may not issue a license to an applicant or may revoke a license from a licensee if such person employs any other person against whom a final cease and desist order has been issued within the preceding five years for a violation of this article. The amendment further requires that applicants and licensees examine the public records of the department to make sure any prospective employee is not subject to such an order.

### **§7-1-707.3**

A new section proposed to clarify that a mobile check cashing facility must be operated in accordance with the rules of the department.

There being no questions from the committee, Chairman Hamrick asked for a motion. Sen. Jeff Mullis, 53<sup>rd</sup>, moved ***HB 141 Do Pass***. Sen. Ralph Hudgens, 47<sup>th</sup>, seconded the motion. ***HB 141*** passed unanimously 7-0. Chairman Hamrick assigned Sen. Ed Harbison, 15<sup>th</sup>, to be the Senate sponsor of this legislation.

**[HB 141 Do Pass](#)**

**Note:** Sen. Goggans left to attend another meeting.

### **[HB 126](#) (Lindsey, Edward 54<sup>th</sup>) Uniform Electronic Transactions Act; enact**

Chairman Hamrick recognized Rep. Ed Lindsey, author of ***HB 126***, to speak to the legislation. Rep. Lindsey explained that ***HB 126*** enacted the Uniform Electronic Transactions Act (UETA). The UETA would set forth uniform rules for electronic business transactions. Electronic records and signatures would satisfy requirements for written documents. The bill would also update Georgia's existing law and give added protection for notaries and certain classes of documents that must always be written (wills), and set forth the procedure to be followed if there are any errors. Chairman Hamrick recognized **Michael O'Sullivan** from the Office of the Secretary of State, Karen Handel, who stated that the Secretary of State supports the legislation with two small amendments that affect the state retention laws. **Jeff McCord** from the Georgia Technology Authority was also recognized by the Chairman for comment. Mr. McCord also stated that GTA supported the legislation with one minor addition of language that stated that the code section would not preclude GTA from specifying additional technology requirements as needed. The committee agreed unanimously 6-0 to add these changes to a committee substitute. Chairman Hamrick recognized Sen. John Bulloch, 11<sup>th</sup>, who made the motion ***HB 126 Do Pass by Substitute*** as amended by the committee. Sen. Ralph Hudgens, 47<sup>th</sup>, seconded the motion. ***HB 126*** passed unanimously by substitute as amended 6-0. Rep. Lindsey stated that Sen. Judson Hill, 32<sup>nd</sup>, would be the Senate sponsor of this legislation.

**[HB 126 Do Pass by Substitute](#)**

With no further business, Chairman Hamrick, 30<sup>th</sup>, adjourned the meeting at 2:51 p.m.

Respectfully submitted,

/s/ Senator Ed Tarver, 22<sup>nd</sup>, Secretary

/s/ Laurie Sparks, Recording Secretary

May 15, 2009

Honorable Bob Ewing  
Secretary of the Senate  
State Capitol  
Room 353  
Atlanta, GA 30334

Dear Mr. Ewing:

Along with the minutes of the **Senate Banking and Financial Institutions Committee**, I am returning the following Bills and Resolutions:

[SB 54](#)

[SB 139](#)

[SB 140](#)

[SR 759](#)

Respectfully submitted,

/s/ Laurie Sparks  
Recording Secretary  
Senate Banking and Financial Institutions Committee

