

BY: Finance Committee

AMENDMENTS TO SENATE BILL NO. 380

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, after "Kelley," insert "Astle"; in line 3, strike "Office of"; in the same line after "Registration" insert "Unit"; strike beginning with "Department" in line 4 down through "Office" in line 5 and substitute "Consumer Protection Division of the Office of the Attorney General; providing that certain lenders are exempt for registration provided they hire a registered builder"; in line 6, after "Director" insert "of the Unit"; strike beginning with "requiring" in line 6 down through the semicolon in line 7; in line 7, strike "Director" and substitute "Division"; in line 16, strike "Director" and substitute "Unit"; in line 20, strike "Director" and substitute "Division"; and in line 22, strike "Director" and substitute "Unit".

On pages 1 and 2, strike beginning with "authorizing" in line 24 on page 1 through the semicolon in line 9 on page 2 and substitute "providing that any remedies are in addition to any remedies available under the Consumer Protection Act or any other laws".

On page 2, in line 10, strike "Director" and substitute "Unit"; in line 20, after the first "Act;" insert "requiring that the Division study the feasibility of a new home builder guaranty fund and a certain report of its findings; requiring the Division to submit a certain annual report to the Governor and General Assembly"; in the same line, strike "the termination of this Act" and substitute "a delayed effective date"; and in line 24, strike "4.5-801" and substitute "4.5-701".

AMENDMENT NO. 2

On page 3, strike beginning with "DIRECTOR" in line 1 down through the period in line 3 and substitute "CONSUMER MEANS AN OWNER OR A CONTRACT PURCHASER".

(C) CONTRACT PURCHASER MEANS A PERSON WHO HAS ENTERED INTO A CONTRACT WITH A HOME BUILDER TO PURCHASE A NEW HOME, BUT WHO HAS NOT YET SETTLED ON THE PURCHASE OF THE NEW HOME.

(Over)

(D) "DIVISION" MEANS THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL.

(E) "EXEMPT LENDER" MEANS A LENDER EXEMPT FROM THE REQUIREMENTS OF REGISTRATION AS PROVIDED IN § 4.5-501(C).";

in lines 4, 28, 30, and 32, strike "(D)", "(E)", "(F)", and "(G)", respectively, and substitute "(F)", "(G)", "(H)", and "(I)", respectively; in lines 21 and 23, in each instance, strike "MANUFACTURED HOMES" and substitute "INDUSTRIALIZED BUILDINGS"; in line 25, strike "OR"; and in line 27, strike the period and substitute "; OR

(VI) A PERSON WHO ERECTS OR CONSTRUCTS NEW HOMES SOLELY IN MONTGOMERY COUNTY."

On page 4, strike in their entirety lines 1 through 3, inclusive; strike in its entirety line 18; and in lines 4 and 6, strike "(I)" and "(J)", respectively, and substitute "(J)" and "(K)", respectively.

AMENDMENT NO. 3

On page 5, in line 5, strike "OFFICE OF HOME BUILDER REGISTRATION" and substitute "HOME BUILDER REGISTRATION UNIT"; and strike in their entirety lines 8 and 9 and substitute "THERE IS A HOME BUILDER REGISTRATION UNIT IN THE DIVISION.".

On pages 5 and 6, strike in their entirety the lines beginning with line 10 on page 5 through line 9 on page 6, inclusive.

AMENDMENT NO. 4

On page 6, in lines 10 and 31, strike "4.5-205." and "4.5-206.", respectively, and substitute "4.5-202." and "4.5-203.", respectively; in lines 11, 12, 15, and 29, in each instance, strike "DIRECTOR" and substitute "UNIT"; strike beginning with "IN" in line 18 down through the period in line 28 and substitute "IN CONSULTATION WITH THE HOME BUILDING INDUSTRY, THE UNIT SHALL DEVELOP A CONSUMER INFORMATION PAMPHLET WRITTEN IN PLAIN ENGLISH THAT DESCRIBES:

(I) THE RIGHTS AND REMEDIES OF CONSUMERS IN THE PURCHASE OF A NEW HOME; AND

(II) ANY OTHER INFORMATION THAT THE DIVISION CONSIDERS REASONABLY NECESSARY TO ASSIST CONSUMERS.

(2) THE DIVISION SHALL PROVIDE EACH REGISTERED HOME BUILDER WITH A SUFFICIENT NUMBER OF COPIES OF THE CONSUMER INFORMATION PAMPHLETS AS NEEDED BY THE HOME BUILDER.

(3) A HOME BUILDER SHALL PROVIDE EACH CONTRACT PURCHASER WITH THE CONSUMER INFORMATION PAMPHLET BEFORE ENTERING INTO A CONTRACT FOR THE INITIAL SALE OF A NEW HOME.

(4) THE CONTRACT PURCHASER SHALL ACKNOWLEDGE IN WRITING THE RECEIPT OF THE CONSUMER INFORMATION PAMPHLET.

(5) THE FAILURE OF A HOME BUILDER TO PROVIDE A COPY OF THE CONSUMER PROTECTION PAMPHLET TO A CONTRACT PURCHASER MAY NOT BE USED AS A BASIS FOR INVALIDATION OF THE CONTRACT FOR THE INITIAL SALE OF A NEW HOME.”;

and in line 33, strike “DIRECTOR” and substitute “DIVISION”.

On page 7, strike beginning with “OF” in line 2 down through “OFFICE” in line 3 and substitute “INCURRED FOR THE ADMINISTRATION AND ENFORCEMENT OF THE MARYLAND HOME BUILDERS REGISTRATION ACT”; in lines 11, 13, and 21, in each instance, strike “DIRECTOR” and substitute “DIVISION”; and strike beginning with “MAINTAINING” in line 19 down through “OFFICE” in line 20 and substitute “ADMINISTERING AND ENFORCING THE MARYLAND HOME BUILDERS REGISTRATION ACT”.

AMENDMENT NO. 5

On page 8, strike beginning with “A” in line 2 down through “\$250,000” in line 3 and substitute “IF A HOME BUILDER’S REGISTRATION HAS BEEN REVOKED AND THE HOME BUILDER APPLIES FOR A NEW REGISTRATION, THE UNIT SHALL, IN ITS DISCRETION, APPROVE THE APPLICATION ON THE APPLICANT’S FULFILLMENT OF SPECIFIED”.

(Over)

TERMS AND CONDITIONS, INCLUDING THE POSTING OF A BOND FOR THE BENEFIT OF SUBCONTRACTORS AND SUPPLIERS, AND THE PAYMENT OF ANY JUDGMENTS OR AWARDS DUE TO ANY SUBCONTRACTORS OR SUPPLIERS"; in lines 6 and 7, in each instance, strike "DIRECTOR" and substitute "UNIT".

On page 9, in line 15, strike "DIRECTOR" and substitute "UNIT"; and strike beginning with "IN" in line 22 down through "TITLE" in line 23 and substitute "IN MONTGOMERY COUNTY".

On page 10, in lines 7, 9, 10, 15, 29, and 31, in each instance strike "DIRECTOR" and substitute "UNIT".

On page 11, in lines 27, 33, and 35, in each instance, strike "DIRECTOR" and substitute "UNIT".

AMENDMENT NO. 6

On page 12, in line 4, strike "DIRECTOR" and substitute "UNIT"; in line 7, strike "COMPLAINTS" and substitute "REMEDIES"; after line 8, insert "THE OWNER OR BUYER'S REMEDIES UNDER THIS SUBTITLE ARE IN ADDITION TO ANY REMEDIES THE OWNER OR BUYER MAY HAVE UNDER THE CONSUMER PROTECTION ACT OR ANY OTHER LAW.".

On pages 12 through 19, strike in their entirety the lines beginning with line 9 on page 12 through line 22 on page 19, inclusive.

AMENDMENT NO. 7

On page 19, after line 31, insert:

"(C) THE FOLLOWING LENDERS ARE EXEMPT FROM THE REQUIREMENTS RELATING TO REGISTRATION UNDER THIS TITLE WHEN THE LENDER HIRES A SECOND REGISTERED HOME BUILDER WHO WOULD UNDERTAKE TO COMPLETE A FIRST HOME BUILDER'S UNFINISHED PROJECT PURSUANT TO A DEFAULT IN OBLIGATIONS OF THE FIRST HOME BUILDER TO THE LENDER:

- (1) A MORTGAGE LENDER AS DEFINED IN § 11-501(J)(1)(II) OF THE

FINANCIAL INSTITUTIONS ARTICLE THAT IS A LICENSEE UNDER TITLE 11, SUBTITLE 5 OF THE FINANCIAL INSTITUTIONS ARTICLE;

(2) A BANK, TRUST COMPANY, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, OR CREDIT UNION INCORPORATED OR CHARTERED UNDER THE LAWS OF THIS STATE OR THE UNITED STATES THAT MAINTAINS ITS PRINCIPAL OFFICE IN THIS STATE;

(3) AN OUT-OF-STATE BANK AS DEFINED IN § 5-1001 OF THE FINANCIAL INSTITUTIONS ARTICLE THAT HAS A BRANCH IN THIS STATE THAT ACCEPTS DEPOSITS;

(4) AN INSTITUTION INCORPORATED UNDER FEDERAL LAW AS A SAVINGS ASSOCIATION OR SAVINGS BANK THAT DOES NOT MAINTAIN ITS PRINCIPAL OFFICE IN THIS STATE BUT HAS A BRANCH THAT ACCEPTS DEPOSITS IN THIS STATE; AND

(5) A SUBSIDIARY OR AFFILIATE OF AN INSTITUTION DESCRIBED IN PARAGRAPH (2), (3), OR (4) OF THIS SUBSECTION THAT IS SUBJECT TO AUDIT OR EXAMINATION BY A REGULATORY BODY OR AGENCY OF THIS STATE, THE UNITED STATES, OR THE STATE WHERE THE SUBSIDIARY OR AFFILIATE MAINTAINS ITS PRINCIPAL OFFICE.

(D) AN EXEMPT LENDER IS SUBJECT ONLY TO §§ 4.5-202(C), 4.5-401, 4.5-503, 4.5-601, 4.5-602, AND 4.5-603 OF THIS TITLE.”.

On page 19, in line 23, strike “6” and substitute “5”; and in lines 24 and 32, strike “4.5-601.” and “4.5-602.”, respectively, and substitute “4.5-501.” and “4.5-502.”, respectively; in line 34, strike “DIRECTOR” and substitute “DIVISION”; and in line 35, strike “§ 4.5-601(A)” and substitute “§ 4.5-501(A)”.

On page 20, in line 2, strike “§ 4.5-601(A)” and substitute “§ 4.5-501(A)”; and in lines 10, 16, and 23, strike “4.5-603.”, “4.5-604.”, and “4.5-701.”, respectively, and substitute “4.5-503.”, “4.5-504.”, and “4.5-601.”, respectively.

(Over)

AMENDMENT NO. 8

On page 20, in line 22, strike “7” and substitute “6”; and strike in their entirety lines 24 through 30, inclusive.

On page 21, in lines 11, 19, 23, and 28, strike “4.5-703”, “4.5-704”, “4.5-705”, and “4.5-706”, respectively, and substitute “4.5-602.”, “4.5-603.”, “4.5-604.”, and “4.5-605.”, respectively; and in line 27, after “HOME” insert “EXCEPT FOR THOSE INDUSTRIALIZED BUILDINGS OR MOBILE HOMES THAT ARE THE RESPONSIBILITY OF THE MANUFACTURER OF THE INDUSTRIALIZED BUILDING AND MOBILE HOME PURSUANT TO ARTICLE 83B, TITLE 6, SUBTITLE 2 OF THE CODE”.

On pages 21 through 22, strike in their entirety the lines beginning with line 33 on page 21 through line 18 on page 22.

On page 22, in line 19, strike “8” and substitute “7”; and in line 20, strike “4.5-801.” and substitute “4.5-701.”.

AMENDMENT NO. 9

On pages 22 through 23, strike in their entirety the lines beginning with line 25 on page 22 through line 4 on page 23, inclusive, and substitute:

“(J) (1) THIS SUBSECTION APPLIES TO BALTIMORE CITY AND ALL OTHER COUNTIES EXCEPT MONTGOMERY COUNTY.

(2) A CONTRACT FOR THE INITIAL SALE OF A NEW HOME, AS DEFINED IN THIS SUBTITLE, SHALL INCLUDE THE FOLLOWING:

(I) THE BUILDER REGISTRATION NUMBER OF THE SELLER OF THE NEW HOME;

(II) A PROVISION STATING THAT THE NEW HOME SHALL BE CONSTRUCTED IN ACCORDANCE WITH ALL APPLICABLE BUILDING CODES IN EFFECT AT THE TIME OF THE CONSTRUCTION OF THE NEW HOME;

(III) A PROVISION REFERENCING ALL PERFORMANCE STANDARDS OR GUIDELINES:

1. THAT THE SELLER SHALL COMPLY WITH IN THE CONSTRUCTION OF THE NEW HOME; AND

2. THAT SHALL PREVAIL IN THE PERFORMANCE OF THE CONTRACT AND ANY ARBITRATION OR ADJUDICATION OF A CLAIM ARISING FROM THE CONTRACT; AND

(IV) A PROVISION DETAILING THE PURCHASER'S RIGHT TO RECEIVE A CONSUMER INFORMATION PAMPHLET AS PROVIDED UNDER THE HOME BUILDER REGISTRATION ACT.

(3) THE PERFORMANCE STANDARDS OR GUIDELINES DESCRIBED IN SUBSECTION (J)(2) OF THIS SECTION SHALL BE:

(I) THE PERFORMANCE STANDARDS OR GUIDELINES ADOPTED AT THE TIME OF THE CONTRACT BY THE NATIONAL ASSOCIATION OF HOME BUILDERS;

(II) ANY PERFORMANCE STANDARDS OR GUIDELINES ADOPTED BY THE HOME BUILDER AND INCORPORATED INTO THE CONTRACT THAT ARE EQUAL TO OR MORE STRINGENT THAN THE PERFORMANCE STANDARDS ADOPTED AT THE TIME OF THE CONTRACT BY THE NATIONAL ASSOCIATION OF HOME BUILDERS; OR

(III) ANY PERFORMANCE STANDARDS OR GUIDELINES ADOPTED AT THE TIME OF THE CONTRACT BY A COUNTY OR MUNICIPAL CORPORATION THAT ARE EQUAL TO OR MORE STRINGENT THAN THE PERFORMANCE STANDARDS OR GUIDELINES ADOPTED AT THE TIME OF THE CONTRACT BY THE NATIONAL ASSOCIATION OF HOME BUILDERS.

(Over)

(4) THE INFORMATION REQUIRED BY PARAGRAPH (2) OF THIS SUBSECTION SHALL BE PRINTED IN CONSPICUOUS TYPE.

AMENDMENT NO. 10

On page 23, after line 16, insert:

“SECTION 4. AND BE IT FURTHER ENACTED, That the Consumer Protection Division of the Office of the Attorney General shall study the feasibility of a new home builder guaranty fund. The Consumer Protection Division shall report its findings and recommendations to the Senate Finance Committee and the House Economic Matters Committee, in accordance with § 2-1246 of the State Government Article, on or before October 1, 2002.

SECTION 5. AND BE IF FURTHER ENACTED, That on or before November 1, 2001 and annually thereafter, the Consumer Protection Division of the Office of the Attorney General shall submit an annual report of its activities regarding home builders and provide copies of the report to the Governor, and, subject to § 2-1246 of the State Government Article, the General Assembly.”;

in line 17, strike “4” and substitute “6”; in line 18, strike “October 1, 2000” and substitute “January 1, 2001”; and strike beginning with “It” in line 18 down through the period in line 20.