

Calendar No. 911

110TH CONGRESS
2D SESSION**S. 2136**

To address the treatment of primary mortgages in bankruptcy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2007

Mr. DURBIN (for himself, Mr. SCHUMER, Mr. DODD, Mr. OBAMA, Mr. WHITEHOUSE, Mr. BROWN, Mr. MENENDEZ, Mr. BIDEN, Mr. HARKIN, Mr. REED, Mrs. BOXER, Mrs. CLINTON, Mrs. FEINSTEIN, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 29 (legislative day, JULY 28), 2008

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To address the treatment of primary mortgages in bankruptcy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Helping Families Save
5 Their Homes in Bankruptcy Act of 2007”.

TITLE I—MINIMIZING FORECLOSURES

SEC. 101. SPECIAL RULES FOR MODIFICATION OF LOANS SECURED BY RESIDENCES.

(a) IN GENERAL.—Section 1322(b) of title 11, United States Code, is amended—

(1) in paragraph (10), by striking “and” at the end;

(2) by redesignating paragraph (11) as paragraph (12); and

(3) by inserting after paragraph (10) the following:

“(11) notwithstanding paragraph (2) and otherwise applicable nonbankruptcy law—

“(A) modify an allowed secured claim secured by the debtor’s principal residence, as described in subparagraph (B), if, after deduction from the debtor’s current monthly income of the expenses permitted for debtors described in section 1325(b)(3) of this title (other than amounts contractually due to creditors holding such allowed secured claims and additional payments necessary to maintain possession of that residence), the debtor has insufficient remaining income to retain possession of the residence

1 by curing a default and maintaining payments
 2 while the case is pending, as provided under
 3 paragraph (5); and

4 “(B) provide for payment of such claim—

5 “(i) for a period not to exceed 30
 6 years (reduced by the period for which the
 7 loan has been outstanding) from the date
 8 of the order for relief under this chapter;
 9 and

10 “(ii) at a rate of interest accruing
 11 after such date calculated at a fixed an-
 12 nual percentage rate, in an amount equal
 13 to the most recently published annual yield
 14 on conventional mortgages published by
 15 the Board of Governors of the Federal Re-
 16 serve System, as of the applicable time set
 17 forth in the rules of the Board, plus a rea-
 18 sonable premium for risk; and”.

19 (b) CONFORMING AMENDMENT.—Section 1325(a)(5)
 20 of title 11, United States Code, is amended by inserting
 21 before “with respect” the following: “except as otherwise
 22 provided in section 1322(b)(11) of this title,”.

1 **SEC. 102. WAIVER OF COUNSELING REQUIREMENT WHEN**
 2 **HOMES ARE IN FORECLOSURE.**

3 Section 109(h) of title 11, United States Code, is
 4 amended by adding at the end the following:

5 “(5) Paragraph (1) shall not apply with respect to
 6 a debtor who files with the court a certification that a
 7 foreclosure sale of the debtor’s principal residence has
 8 been scheduled.”.

9 **TITLE II—PROVIDING OTHER**
 10 **DEBTOR PROTECTIONS**

11 **SEC. 201. COMBATING EXCESSIVE FEES.**

12 Section 1322(c) of title 11, the United States Code,
 13 is amended—

14 (1) in paragraph (1), by striking “and” at the
 15 end;

16 (2) in paragraph (2), by striking the period at
 17 the end and inserting “; and”; and

18 (3) by adding at the end the following:

19 “(3) to the extent that an allowed secured claim
 20 is secured by the debtor’s principal residence, the
 21 value of which is greater than the amount of such
 22 claim, fees, costs, or charges arising during the
 23 pendency of the case may be added to secured debt
 24 provided for by the plan only if—

1 “(A) notice of such fees, costs or charges
2 is filed with the court before the expiration of
3 the earlier of—

4 “(i) 1 year after the time at which
5 they are incurred; or

6 “(ii) 60 days before the conclusion of
7 the case; and

8 “(B) such fees, costs, or charges are law-
9 ful, reasonable, and provided for in the under-
10 lying contract;

11 “(4) the failure of a party to give notice de-
12 scribed in paragraph (3) shall be deemed a waiver
13 of any claim for fees, costs, or charges described in
14 paragraph (3) for all purposes, and any attempt to
15 collect such fees, costs, or charges shall constitute a
16 violation of section 524(a)(2) of this title or, if the
17 violation occurs before the date of discharge, of sec-
18 tion 362(a) of this title; and

19 “(5) a plan may provide for the waiver of any
20 prepayment penalty on a claim secured by the prin-
21 cipal residence of the debtor.”.

22 **SEC. 202. MAINTAINING DEBTORS’ LEGAL CLAIMS.**

23 Section 554(e) of title 11, United States Code, is
24 amended by adding at the end the following:

1 “(e) In any action in State or Federal court with re-
 2 spect to a claim or defense asserted by an individual debt-
 3 or in such action that was not scheduled under section
 4 521(a)(1) of this title, the trustee shall be allowed a rea-
 5 sonable time to request joinder or substitution as the real
 6 party in interest. If the trustee does not request joinder
 7 or substitution in such action, the debtor may proceed as
 8 the real party in interest, and no such action shall be dis-
 9 missed on the ground that it is not prosecuted in the name
 10 of the real party in interest or on the ground that the
 11 debtor’s claims were not properly scheduled in a case
 12 under this title.”.

13 **SEC. 203. RESOLVING DISPUTES.**

14 Section 1334 of title 28, United States Code, is
 15 amended by adding at the end the following: “Notwith-
 16 standing any agreement for arbitration that is subject to
 17 chapter 1 of title 9, in any core proceeding under section
 18 157(b) of this title involving an individual debtor whose
 19 debts are primarily consumer debts, the court may hear
 20 and determine the proceeding, and enter appropriate or-
 21 ders and judgments, in lieu of referral to arbitration.”.

22 **SEC. 204. ENACTING A HOMESTEAD FLOOR FOR DEBTORS**
 23 **OVER 55 YEARS OF AGE.**

24 (a) IN GENERAL.—Section 522(b)(3) of title 11,
 25 United States Code, is amended—

3 (2) in subparagraph (C), by striking the period
4 at the end and inserting “; and”; and

(3) by adding at the end and inserting the following:

7 “(D) if the debtor, as of the date of the filing
8 of the petition, is 55 years old or older, the debtor’s
9 aggregate interest, not to exceed \$75,000 in value,
10 in real property or personal property that the debtor
11 or a dependent of the debtor uses as a principal resi-
12 dence, or in a cooperative that owns property that
13 the debtor or a dependent of the debtor uses as a
14 principal residence.”.

(b) EXEMPTION AUTHORITY.—Section 522(d)(1) of title 11, United States Code, is amended by inserting “or, if the debtor is 55 years of age or older, \$75,000 in value,” before “in real property”.

19 SEC. 205. DISALLOWING CLAIMS FROM VIOLATIONS OF
20 CONSUMER PROTECTION LAWS.

21 Section 502(b) of title 11, United States Code, is
22 amended—

23 (1) in paragraph (8), by striking “or” at the
24 end;

1 (2) in paragraph (9), by striking the period at
2 the end and inserting “; or”; and

3 (3) by adding at the end the following:

4 “(10) the claim is subject to any remedy for
5 damages or rescission due to failure to comply with
6 any applicable requirement under the Truth in
7 Lending Act (15 U.S.C. 1601 et seq.), or any other
8 provision of applicable State or Federal consumer
9 protection law that was in force when the noncompli-
10 ance took place, notwithstanding the prior entry of
11 a foreclosure judgment.”.

12 **SECTION 1. SHORT TITLE.**

13 *This Act may be cited as the “Helping Families Save*
14 *Their Homes in Bankruptcy Act of 2008”.*

15 **TITLE I—MINIMIZING**
16 **FORECLOSURES**

17 **SEC. 101. DEFINITIONS.**

18 *Section 101 of title 11, United States Code, is amend-*
19 *ed—*

20 (1) by redesignating paragraphs (40A) and
21 (40B) as paragraphs (40B) and (40C), respectively;

22 (2) by inserting after paragraph (40) the fol-
23 lowing:

24 “(40A) The term ‘nontraditional mortgage’
25 means a security interest in the debtor’s principal

1 *residence that secures a debt for a loan that at any*
2 *period during the term of the loan provides for the de-*
3 *ferral of payment of principal or interest through*
4 *permitting periodic payments that do not cover the*
5 *full amount of interest due or that cover only the in-*
6 *terest due, except that such term excludes—*

7 *“(A) a loan that at any period during the*
8 *term of the loan provides for the deferral of pay-*
9 *ment of principal through permitting periodic*
10 *payments that cover only the interest due, if the*
11 *creditor demonstrates that it determined in good*
12 *faith at the time the loan was consummated,*
13 *after undergoing a full underwriting process*
14 *based on verified and documented information,*
15 *that the debtor had a reasonable ability to repay*
16 *at the full interest and principal payment*
17 *amount (assuming an initial 30 year full amor-*
18 *tization), and payments under the loan resulted*
19 *in a debt-to-income ratio of the debtor in an*
20 *amount equal to or less than that which would*
21 *have been permitted under guidelines and direc-*
22 *tives established by the Secretary of Housing and*
23 *Urban Development pursuant to section 203.33*
24 *of title 24, Code of Federal Regulations, for loans*
25 *subject to such section;*

1 “(B) a home equity line of credit that is in
2 a subordinate lien position; and

3 “(C) a reverse mortgage.”;

4 (3) by redesignating paragraphs (53B) through
5 (53D) as paragraphs (53C), (53D), (53E), and (53F),
6 respectively; and

7 (4) by inserting after paragraph (53A) the fol-
8 lowing:

9 “(53B) The term ‘subprime mortgage’ means a
10 security interest in the debtor’s principal residence
11 that secures a debt for a loan that has an annual per-
12 centage rate that is greater than—

13 “(A) the sum of 3 percent plus the yield on
14 United States Treasury securities having com-
15 parable periods of maturity, if the loan is se-
16 cured by a first mortgage or first deed of trust;
17 or

18 “(B) the sum of 5 percent plus the yield on
19 United States Treasury securities having com-
20 parable periods of maturity, if the loan is se-
21 cured by a subordinate mortgage or subordinate
22 deed of trust.

23 Without regard to whether such loan is subject to or
24 reportable under the Home Mortgage Disclosure Act,
25 the difference between the annual percentage rate of

1 *such loan and the yield on United States Treasury se-*
 2 *curities having comparable periods of maturity shall*
 3 *be determined using the procedures and calculation*
 4 *methods applicable to loans that are subject to the re-*
 5 *porting requirements of such Act, except that such*
 6 *yield shall be determined as of the 15th day of the*
 7 *month preceding the month in which a completed ap-*
 8 *plication is submitted for such loan. If such loan pro-*
 9 *vides for a fixed interest rate for an introductory pe-*
 10 *riod and then resets or adjusts to a variable interest*
 11 *rate, the determination of the annual percentage rate*
 12 *shall be based on the greater of the introductory rate*
 13 *and the fully indexed rate. For purposes of this para-*
 14 *graph, the term ‘fully indexed rate’ means the pre-*
 15 *vailing index rate on a residential mortgage loan at*
 16 *the time at which the loan is made, plus the margin*
 17 *that will apply after the expiration of an introduc-*
 18 *tory interest rate.’’.*

19 **SEC. 102. SPECIAL RULES FOR MODIFICATION OF LOANS**
 20 **SECURED BY RESIDENCES.**

21 (a) *IN GENERAL.*—Section 1322(b) of title 11, United
 22 States Code, is amended—
 23 (1) *in paragraph (10), by striking “and” at the*
 24 *end;*

1 (2) by redesignating paragraph (11) as para-
2 graph (12); and

3 (3) by inserting after paragraph (10) the fol-
4 lowing:

5 “(11) notwithstanding paragraph (2) and other-
6 wise applicable nonbankruptcy law—

7 “(A) modify an allowed secured claim for a
8 debt incurred prior to the effective date of this
9 paragraph secured by a nontraditional mort-
10 gage, or a subprime mortgage, and any lien sub-
11 ordinate to such claim, on the debtor’s principal
12 residence, as described in subparagraph (B), if,
13 after deduction from the debtor’s current monthly
14 income of the expenses permitted for debtors de-
15 scribed in section 1325(b)(3) of this title (other
16 than amounts contractually due to creditors
17 holding such allowed secured claims and addi-
18 tional payments necessary to maintain posses-
19 sion of that residence), the debtor has insufficient
20 remaining income to retain possession of the res-
21 idence by curing a default and maintaining
22 payments while the case is pending, as provided
23 under paragraph (5);

24 “(B) provide for payment of such claim—

1 “(i) in an amount equal to the amount
2 of the allowed secured claim;

3 “(ii) for a period that is the longer of
4 30 years (reduced by the period for which
5 the loan has been outstanding) or the re-
6 maining term of such loan, beginning on
7 the date of the order for relief under this
8 chapter; and

9 “(iii) at a rate of interest accruing
10 after such date calculated at a fixed annual
11 percentage rate, in an amount equal to the
12 most recently published annual yield on
13 conventional mortgages published by the
14 Board of Governors of the Federal Reserve
15 System, as of the applicable time set forth
16 in the rules of the Board, plus a reasonable
17 premium for risk; and

18 “(C) if a claim has been modified to an
19 amount below the original principal of the loan
20 pursuant to subparagraph (B)(i) and the debt-
21 or’s principal residence is sold during the term
22 of the plan, the holder of the claim shall be enti-
23 tled to receive, in addition to the unpaid portion
24 of the allowed secured claim, the net proceeds of

1 *the sale, or the amount of the holder’s allowed*
 2 *unsecured claim, whichever is less; and”.*

3 **(b) CONFORMING AMENDMENT.**—*Section 1325(a)(5) of*
 4 *title 11, United States Code, is amended by inserting before*
 5 *“with respect” the following: “except as otherwise provided*
 6 *in section 1322(b)(11) of this title,”.*

7 **SEC. 103. WAIVER OF COUNSELING REQUIREMENT WHEN**
 8 **HOMES ARE IN FORECLOSURE.**

9 *Section 109(h) of title 11, United States Code, is*
 10 *amended by adding at the end the following:*

11 *“(5) Paragraph (1) shall not apply with respect to a*
 12 *debtor who files with the court a certification that a fore-*
 13 *closure sale of the debtor’s principal residence has been*
 14 *scheduled.”.*

15 **TITLE II—PROVIDING OTHER**
 16 **DEBTOR PROTECTIONS**

17 **SEC. 201. COMBATING EXCESSIVE FEES.**

18 *Section 1322(c) of title 11, the United States Code, is*
 19 *amended—*

20 *(1) in paragraph (1), by striking “and” at the*
 21 *end;*

22 *(2) in paragraph (2), by striking the period at*
 23 *the end and inserting a semicolon; and*

24 *(3) by adding at the end the following:*

1 “(3) the plan need not provide for the payment
2 of, and the debtor, the debtor’s property, and property
3 of the estate shall not be liable for, any fee, cost, or
4 charge, notwithstanding section 506(b), that arises in
5 connection with a claim secured by the debtor’s prin-
6 cipal residence if the event that gives rise to such fee,
7 cost, or charge occurs while the case is pending but
8 before the discharge order, except to the extent that—

9 “(A) notice of such fees, costs or charges is
10 filed with the court, and served on the debtor and
11 the trustee, before the expiration of the earlier
12 of—

13 “(i) 1 year after the event that gives
14 rise to such fee, cost, or charge occurs; or

15 “(ii) 60 days before the closing of the
16 case; and

17 “(B) such fees, costs, or charges are lawful,
18 reasonable, and provided for in the agreement
19 under which such claim or security interest
20 arose;

21 “(4) the failure of a party to give notice de-
22 scribed in paragraph (3) shall be deemed a waiver of
23 any claim for fees, costs, or charges described in para-
24 graph (3) for all purposes, and any attempt to collect
25 such fees, costs, or charges shall constitute a violation

1 of section 524(a)(2) of this title or, if the violation oc-
 2 curs before the date of discharge, of section 362(a) of
 3 this title; and

4 “(5) a plan may provide for the waiver of any
 5 prepayment penalty on a claim secured by the prin-
 6 cipal residence of the debtor.”.

7 **SEC. 202. MAINTAINING DEBTORS’ LEGAL CLAIMS.**

8 Section 554(e) of title 11, United States Code, is
 9 amended by adding at the end the following:

10 “(e) In any action in State or Federal court with re-
 11 spect to a claim or defense asserted by an individual debtor
 12 in such action that was not scheduled under section
 13 521(a)(1) of this title, the trustee shall be allowed a reason-
 14 able time to request joinder or substitution as the real party
 15 in interest. If the trustee does not request joinder or substi-
 16 tution in such action, the debtor may proceed as the real
 17 party in interest, and no such action shall be dismissed on
 18 the ground that it is not prosecuted in the name of the real
 19 party in interest or on the ground that the debtor’s claims
 20 were not properly scheduled in a case under this title.”.

21 **SEC. 203. RESOLVING DISPUTES.**

22 Section 1334 of title 28, United States Code, is amend-
 23 ed by adding at the end the following: “Notwithstanding
 24 any agreement for arbitration that is subject to chapter 1
 25 of title 9, in any core proceeding under section 157(b) of

1 *this title involving an individual debtor whose debts are*
 2 *primarily consumer debts, the court may hear and deter-*
 3 *mine the proceeding, and enter appropriate orders and*
 4 *judgments, in lieu of referral to arbitration.”.*

5 **SEC. 204. ENACTING A HOMESTEAD FLOOR FOR DEBTORS**
 6 **OVER 55 YEARS OF AGE.**

7 (a) *IN GENERAL.*—Section 522(b)(3) of title 11,
 8 *United States Code, is amended—*

9 (1) *in subparagraph (B), by striking “and” at*
 10 *the end;*

11 (2) *in subparagraph (C), by striking the period*
 12 *at the end and inserting “; and”; and*

13 (3) *by adding at the end and inserting the fol-*
 14 *lowing:*

15 “(D) *if the debtor, as of the date of the filing of*
 16 *the petition, is 55 years old or older, the debtor’s ag-*
 17 *gregate interest, not to exceed \$75,000 in value, in*
 18 *real property or personal property that the debtor or*
 19 *a dependent of the debtor uses as a principal resi-*
 20 *dence, or in a cooperative that owns property that the*
 21 *debtor or a dependent of the debtor uses as a prin-*
 22 *cipal residence.”.*

23 (b) *EXEMPTION AUTHORITY.*—Section 522(d)(1) of
 24 *title 11, United States Code, is amended by inserting “or,*

1 *if the debtor is 55 years of age or older, \$75,000 in value,”*
 2 *before “in real property”.*

3 **SEC. 205. DISALLOWING CLAIMS FROM VIOLATIONS OF**
 4 **CONSUMER PROTECTION LAWS.**

5 *Section 502(b) of title 11, United States Code, is*
 6 *amended—*

7 *(1) in paragraph (8), by striking “or” at the*
 8 *end;*

9 *(2) in paragraph (9), by striking the period at*
 10 *the end and inserting “; or”; and*

11 *(3) by adding at the end the following:*

12 *“(10) the claim is subject to any remedy for*
 13 *damages or rescission due to failure to comply with*
 14 *any applicable requirement under the Truth in Lend-*
 15 *ing Act (15 U.S.C. 1601 et seq.), or any other provi-*
 16 *sion of applicable State or Federal consumer protec-*
 17 *tion law that was in force when the noncompliance*
 18 *took place, notwithstanding the prior entry of a fore-*
 19 *closure judgment.”.*

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