

Enrolled
House Bill 2764

Sponsored by Representative WITT (at the request of Oregon Association of Mortgage Brokers)

CHAPTER

AN ACT

Relating to mortgage lending; creating new provisions; and amending ORS 59.840, 59.865, 59.880, 59.900, 59.905 and 59.962.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 59.840 is amended to read:

59.840. As used in ORS 59.840 to 59.965:

- (1) "Director" means the Director of the Department of Consumer and Business Services.
- (2) "Fraud," "deceit" and "defraud" are not limited to common-law deceit.
- (3) "License" means a license issued to a mortgage banker or mortgage broker under ORS 59.840 to 59.965.

(4)(a) "Loan originator" means an individual employed by or purporting to act as an agent or independent contractor for a mortgage banker or mortgage broker that is required to be licensed under ORS 59.840 to 59.965, with the expectation by the individual of compensation or gain that is determined by the amount borrowed or the terms and conditions agreed to by the mortgage loan borrower, and having primary job responsibilities that include negotiating with a borrower or potential borrower for the purpose of establishing the terms and conditions of a mortgage loan.

(b) "Loan originator" includes a person employed at a location outside this state whose primary job responsibilities include contacting or attempting to contact a borrower or potential borrower within this state through any medium or mode of communication for purposes of providing a mortgage loan within this state.

(c) "Loan originator" does not include an individual whose responsibilities are clerical or administrative functions, including but not limited to gathering information, requesting information, word processing, soliciting general interest in mortgage loans, sending correspondence and assembling files.

(d) "Loan originator" does not include an employee of a mortgage banker that is rated as good or better under the federal rating system in effect on May 1, 2001, for seller-servicers of Federal Housing Administration, Federal Home Loan Mortgage Corporation or Federal National Mortgage Association loans and that has an office within this state at which the mortgage banker maintains complete and current copies of all employment records and other records as required by the Director of the Department of Consumer and Business Services by order or rule, in a format acceptable to the director.

(e) "Loan originator" does not include an insurance agent or insurance consultant licensed under ORS 744.002.

(f) “Loan originator” does not include a person or group of persons exempted by rule or order of the director.

[4] **(5) “Mortgage banker”:**

(a) Means any person who for compensation or in the expectation of compensation:

(A) Either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage banking loan or a mortgage loan; and

(B) Services or sells a mortgage banking loan.

(b) Does not include:

(A) A financial institution, as defined in ORS 706.008.

(B) A bank holding company, as defined in ORS 706.008, holding an institution described in subparagraph (A) of this paragraph; a savings and loan holding company as defined in section 408 of the National Housing Act, 12 U.S.C. 1730a (1982), holding an association described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the bank holding company or savings and loan holding company; or subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph, provided that the appropriate statutory regulatory authority is exercising control over or is regulating or supervising the persons listed in this subparagraph in their mortgage banking activities in accordance with the purposes of ORS 59.840 to 59.965.

(C) A person who makes a loan secured by an interest in real estate with the person’s own moneys, for the person’s own investment and who is not engaged in the business of making loans secured by an interest in real estate.

(D) An attorney licensed in this state who negotiates mortgage banking loans or mortgage loans in the ordinary course of business, unless the business of negotiating mortgage banking loans or mortgage loans constitutes substantially all of the attorney’s professional activity.

(E) A person who, as seller of real property, receives one or more mortgages or deeds of trust as security for a separate money obligation.

(F) An agency of any state or of the United States.

(G) A person who receives a mortgage or deed of trust on real property as security for an obligation payable on an installment or deferred payment basis and arising out of materials furnished or services rendered in the improvement of that real property or any lien created without the consent of the owner of the real property.

(H) A person who funds a mortgage banking loan or mortgage loan which has been originated and processed by a licensee or by an exempt person and who does not maintain a place of business in this state in connection with funding mortgage banking loans or mortgage loans, does not directly or indirectly solicit borrowers in this state for the purpose of making mortgage banking loans or mortgage loans and does not participate in the negotiation of mortgage banking loans or mortgage loans. For the purpose of this subparagraph, “negotiation of mortgage banking loans or mortgage loans” does not include setting the terms under which a person may buy or fund a mortgage banking loan or a mortgage loan originated by a licensee or exempt person.

(I) A nonprofit federally tax exempt corporation certified by the United States Small Business Administration and organized to promote economic development within this state whose primary activity consists of providing financing for business expansion.

(J) A licensee licensed under ORS chapter 725 or a mortgage broker.

(K) A retirement or pension fund.

(L) An insurer as defined in ORS 731.106.

(M) A court appointed fiduciary.

(N) Any other person designated by rule or order of the director.

[5] **(6) “Mortgage banking loan”** means a loan, extension of credit or a retail sales contract that is funded exclusively from the mortgage banker’s own resources, which is directly or indirectly secured by a mortgage or deed of trust or any lien interest on real estate and which is created with the consent of the owner of the real property. For purposes of this subsection, “own resources” means any of the following:

(a) Cash, corporate capital, warehouse credit lines at financial institutions defined in ORS 706.008 or other sources that are liability items of the mortgage banker's financial statements for which its assets are pledged;

(b) Correspondent contracts between the mortgage banker and a bank, savings bank, trust company, savings and loan association, credit union, profit sharing or pension trust, a licensee under ORS chapter 725 or an insurance company; or

(c) The mortgage banker's affiliates' cash, corporate capital, warehouse credit lines at financial institutions defined in ORS 706.008 or other sources that are liability items on the affiliates' financial statements for which the affiliates' assets are pledged. As used in this paragraph, "affiliates" means entities that, directly or indirectly, through one or more intermediaries controls, are controlled by or are under common control with the entity specified.

[(6)] (7) "Mortgage broker":

(a) Means a person who:

(A) Engages all or part of the time, for the account of others or for the person's own account, in the business of selling real estate paper whether as issuer, agent or principal to persons other than persons enumerated in ORS 59.035 (4);

(B) Engages all or part of the time, for the account of others or for the person's own account, in the business of accepting funds from one or more persons other than persons enumerated in ORS 59.035 (4) for investment in real estate paper; or

(C) For compensation, or in the expectation of compensation, either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage loan.

(b) Does not include:

(A) A financial institution, as defined in ORS 706.008.

(B) A bank holding company, as defined in ORS 706.008, holding an institution described in subparagraph (A) of this paragraph; a savings and loan holding company as defined in section 408 of the National Housing Act, 12 U.S.C. 1730a (1982), holding an association described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the bank holding company or savings and loan holding company; or subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph, provided that the appropriate statutory regulatory authority is exercising control over or is regulating or supervising the persons listed in this subparagraph in their mortgage brokering activities in accordance with the purposes of ORS 59.840 to 59.965.

(C) A person who purchases real property and issues an obligation to finance the transaction to the seller incidentally to the sale.

(D) A real estate licensee as defined in ORS 696.010 who performs services solely incidental to the practice of professional real estate activity as defined in ORS 696.010, unless the real estate licensee performs the functions of a mortgage banker or a mortgage broker as defined in this section.

(E) A person licensed under the provisions of ORS chapter 725 or a mortgage banker.

(F) A person who makes a loan secured by an interest in real estate with the person's own moneys, for the person's own investment and who is not engaged in the business of making loans secured by an interest in real estate.

(G) An attorney licensed in this state who negotiates mortgage loans in the ordinary course of business, unless the business of negotiating mortgage loans constitutes substantially all of the attorney's professional activity.

(H) A person who, as seller of real property, receives one or more mortgages or deeds of trust as security for a separate money obligation.

(I) An agency of any state or of the United States.

(J) A person who receives a mortgage or deed of trust on real property as security for an obligation payable on an installment or deferred payment basis and arising out of materials furnished or services rendered in the improvement of that real property or any lien created without the consent of the owner of the real property.

(K) A person who funds a mortgage loan which has been originated and processed by a licensee or by an exempt person and who does not maintain a place of business in this state in connection with funding mortgage loans, does not directly or indirectly solicit borrowers in this state for the purpose of making mortgage loans and does not participate in the negotiation of mortgage loans. For the purpose of this subparagraph, "negotiation of mortgage loans" does not include setting the terms under which a person may buy or fund a mortgage loan originated by a licensee or exempt person.

(L) A nonprofit federally tax exempt corporation certified by the United States Small Business Administration and organized to promote economic development within this state whose primary activity consists of providing financing for business expansion.

(M) A person licensed under ORS 822.020 who provides services customarily associated with the retail sales of manufactured dwellings, including communication of generally available information regarding mortgage loans, unless:

(i) The person receives from a purchaser a fee or commission as a mortgage broker or mortgage banker that is disclosed in the sales contract, purchase agreement or applicable federal documents;

(ii) For the benefit of a potential purchaser, the person completes a loan application form or other document that is part of a mortgage banking loan and completes a good faith estimate under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.);

(iii) The person solicits or receives credit information from a prospective purchaser for the purpose of making credit decisions; or

(iv) The person negotiates with a potential purchaser the terms of a mortgage loan including but not limited to points, interest rates, length of loan or other loan conditions.

(N) Any other person designated by rule or order of the director.

[7] (8) "Mortgage loan" means a loan, extension of credit or retail sales contract, other than a mortgage banking loan, secured by a mortgage or deed of trust or any lien interest on real estate that is created with the consent of the owner of the real estate.

[8] (9) "Residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in property upon which four or fewer residential dwelling units are planned or situated, including but not limited to individual units or condominiums and cooperatives. As used in this subsection, "residential dwelling unit" means an improvement designed for residential occupancy.

SECTION 2. Sections 3 to 9 of this 2001 Act are added to and made a part of ORS 59.840 to 59.965.

SECTION 3. (1) The Legislative Assembly finds and declares that:

(a) The public interest is served by identifying a loan originator with a specific mortgage banker or mortgage broker; and

(b) The public must be protected from the conflicts of interest created when a loan originator is employed by more than one mortgage lender.

(2) A loan originator may not originate loans for more than one mortgage banker, mortgage broker or other mortgage lender or independent mortgage agency at the same time.

SECTION 4. (1) A mortgage banker or mortgage broker must provide to the Director of the Department of Consumer and Business Services, and keep current, a list of loan originators employed by the banker or broker. The banker or broker shall notify the director within 30 days of the employment or termination of employment of a loan originator.

(2) An applicant for issuance of a mortgage banker or mortgage broker license under ORS 59.850 shall include with the application evidence acceptable to the director that each person the applicant has hired or intends to hire as a loan originator has:

(a)(A) Successfully completed an entry level training course approved or provided by an organization certified by the director as described in section 9 of this 2001 Act; and

(B) Passed an examination, approved or provided by an organization described in section 9 of this 2001 Act, on laws and rules relating to mortgage lending in this state; or

(b) If the person has been employed as a loan originator for two or more years in this state, completed continuing education as required by the director pursuant to section 8 of this 2001 Act.

(3) A mortgage banker or mortgage broker that applies for renewal of a license pursuant to ORS 59.855 shall include with the application evidence acceptable to the director that each person employed by the banker or broker as a loan originator has:

(a)(A) Successfully completed an entry level training course approved or provided by an organization certified by the director as described in section 9 of this 2001 Act; and

(B) Passed an examination, approved or provided by an organization described in section 9 of this 2001 Act, on laws and rules relating to mortgage lending in this state; or

(b) If the person has been employed as a loan originator for two or more years in this state, completed continuing education as required by the director pursuant to section 8 of this 2001 Act.

(4) An applicant under subsection (2) or (3) of this section shall, at the time of application:

(a) Certify that, to the best of the applicant's belief, no person the applicant employs or intends to employ as a loan originator has engaged in conduct that would constitute a violation of section 3 (2) or 6 of this 2001 Act; or

(b) Note any exceptions to the certification made in paragraph (a) of this subsection. An applicant is not subject to an action at law for making a notation under this paragraph in good faith.

(5) A mortgage banker or mortgage broker may voluntarily report to the director regarding employees who would qualify as loan originators if not exempted under ORS 59.840 (4). Voluntary reporting by a banker or broker under this subsection does not make the reported employees subject to training, examination or continuing education requirements or other laws governing loan originators.

(6) The director shall keep records that include notifications filed under subsection (1) of this section and exceptions to certifications under subsection (4) of this section. The director shall retain the records for a period of not less than three years. The director shall keep for 10 years a record of any complaint against a loan originator that has been determined to be justified pursuant to section 7 of this 2001 Act.

(7) Notwithstanding subsections (1) to (3) of this section and ORS 59.865 (17) and sections 6 (4) and 8 of this 2001 Act, the director, by rule, may waive any training, examination or continuing education requirement for a loan originator for a period not to exceed six months after the person begins or resumes employment as a loan originator.

SECTION 5. Notwithstanding section 4 of this 2001 Act, for a filing made pursuant to ORS 59.850 or 59.855 within two years after the effective date of this 2001 Act, a person who is employed as a loan originator on the effective date of this 2001 Act and who has at least three years of full-time experience as a loan originator on the effective date of this 2001 Act is considered to have met the applicable training, examination and continuing education requirements of section 4 (2) and (3) of this 2001 Act. After the filing of any application described in this section, the loan originator is subject to the continuing education requirements established pursuant to section 8 of this 2001 Act. The two-year period for the loan originator to comply with continuing education requirements is measured from the filing date of the first application described in this section that lists the loan originator.

SECTION 6. A person employed by a mortgage banker or mortgage broker as a loan originator may not:

(1) Engage in dishonest, fraudulent or illegal practices or conduct in any business or profession or engage in unfair or unethical practices or conduct in connection with the mortgage business.

(2) Willfully or repeatedly violate or fail to comply with a provision of ORS 59.840 to 59.965 or a rule or order of the Director of the Department of Consumer and Business Services.

(3) Fail to account to persons interested for all money or property received in connection with a mortgage loan.

(4) Fail to meet the training, education or continuing education requirements for loan originators.

SECTION 7. (1) If the Director of the Department of Consumer and Business Services receives a complaint against a loan originator for a violation of section 3 (2) or 6 of this 2001 Act, the director may notify the loan originator and the mortgage banker or mortgage broker employing the loan originator.

(2) The director may investigate a complaint against a loan originator. Upon the conclusion of the investigation, the director shall promptly notify the loan originator and the mortgage banker or mortgage broker employing the loan originator of the director's proposed determination regarding the complaint.

(3) Any hearing on a complaint must be conducted as provided by rules of the director and pursuant to ORS 183.310 to 183.550.

(4) If the director determines, after opportunity for hearing, that a complaint is justified, the director shall note the complaint in the records kept pursuant to section 4 (6) of this 2001 Act. For a violation of section 3 (2) or 6 of this 2001 Act, the director may impose requirements for supervision and remedial education of the loan originator, assess civil penalties against the loan originator as provided in ORS 59.996 or refer the matter for criminal prosecution pursuant to ORS 59.992.

SECTION 8. The Director of the Department of Consumer and Business Services shall, by rule, establish continuing education requirements for persons employed by mortgage bankers or mortgage brokers as loan originators. The requirements established by the director may not be less than 10 hours every two years and not more than 20 hours every two years. The continuing education must be obtained through continuing education programs approved or provided by an organization whose continuing education curriculum and testing is certified by the director as described in section 9 of this 2001 Act.

SECTION 9. (1) The Director of the Department of Consumer and Business Services may certify an organization as qualified to approve or provide entry-level training or continuing education curricula and testing for loan originators. The director, by rule, shall establish criteria for certifying an organization under this subsection.

(2) The director, by rule, may provide for the acceptance or conditional acceptance of continuing education hours completed pursuant to the laws of another state that the director determines provide protection to the public that exceeds or is substantially similar to the protection provided by ORS 59.840 to 59.965.

SECTION 10. ORS 59.865 is amended to read:

59.865. Except as provided in ORS 59.870, the Director of the Department of Consumer and Business Services may by order deny, suspend, **condition** or revoke a license of a person as a mortgage banker or mortgage broker if the director finds that the applicant or licensee:

(1) Is insolvent, either in the sense that the liabilities of the applicant or licensee exceed the assets of the applicant or licensee or that the applicant or licensee cannot meet the obligations of the applicant or licensee as *[they]* **the obligations** mature, or is in such financial condition that the applicant or licensee cannot continue in business with safety to the customers of the applicant or licensee.

(2) Has engaged in dishonest, fraudulent or illegal practices or conduct in any business or profession or unfair or unethical practices or conduct in connection with the mortgage business.

(3) Has willfully or repeatedly violated or failed to comply with any provision of ORS 59.840 to 59.965 or any rule or order of the director.

(4) Has been convicted of a misdemeanor, an essential element of which is fraud, or of a felony.

(5) Has filed an application for a license [*which*] **that**, as of the date the license was issued, or as of the date of an order denying, suspending, **conditioning** or revoking a license, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

(6) Has failed to account to persons interested for all money or property received **in connection with a mortgage loan**.

(7) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage business.

(8) Is the subject of an order of the director denying, suspending, **conditioning** or revoking a license as a mortgage banker or mortgage broker.

(9) Is the subject of a United States Postal Service fraud order that is currently effective and was issued within the last five years.

(10) Does not have the experience required by ORS 59.850 (2) or (3).

(11) Has failed to comply with the requirements of ORS 59.860 to make and keep records prescribed by rule or order of the director, to produce such records required by the director or to file any financial reports or other information the director by rule or order may require.

(12) Is the subject of an order of the director denying, suspending, **conditioning** or revoking a license under the provisions of any other law administered by the director.

(13) Is the subject of a cease and desist order entered after notice and opportunity for hearing and issued by the director within the last five years.

(14) Has demonstrated negligence or incompetence in performing any act for which the licensee is required to hold a license.

(15) Has failed to supervise diligently and control the mortgage-related activities of a loan originator employed by the licensee.

(16) Has knowingly misrepresented to the director the training of, examination of or continuing education time earned by a loan originator employed by the licensee.

(17) Has willfully or repeatedly employed persons as loan originators who do not meet the training, education or continuing education requirements for loan originators.

(18) Has failed to notify the director of the termination of a loan originator for failure to comply with state or federal laws, regulations or rules.

SECTION 11. ORS 59.880 is amended to read:

59.880. The Director of the Department of Consumer and Business Services shall have general supervision and control over all **loan originators**, mortgage bankers and mortgage brokers residing or doing business in this state and engaged in any activity subject to the provisions of ORS 59.840 to 59.965. All such persons and their records and everything connected with their activities shall be subject to examination by the director at any time. The provisions of this section and of any other section of ORS 59.840 to 59.965 relating to examinations shall extend to any person who should have been **reported as a loan originator under section 4 of this 2001 Act** or licensed as a mortgage banker or mortgage broker, any person exempted by rule from those definitions or any person whose license has expired or has been withdrawn, canceled, suspended, **conditioned** or revoked. The director may collect from each such person the actual expenses incurred in that examination.

SECTION 12. ORS 59.900 is amended to read:

59.900. (1) In accordance with this section and ORS 183.310 to 183.550, the Director of the Department of Consumer and Business Services may from time to time make, amend and rescind such rules as are necessary to carry out the provisions of ORS 59.840 to 59.965, including **but not limited to rules governing the activities of loan originators, mortgage bankers and mortgage brokers and** rules governing the purchase or sale of mortgage banking loans, mortgage loans or real estate paper in coordination with applicable provisions of ORS 59.005 to 59.451, 59.660 to 59.830, 59.991 and 59.995 and rules adopted thereunder.

(2) Any financial statement required under ORS 59.840 to 59.965 shall be prepared in accordance with generally accepted accounting principles. The director may by rule prescribe:

- (a) The form and content of financial statements required under ORS 59.840 to 59.965;
- (b) The circumstances under which consolidated financial statements shall be filed; and
- (c) Whether any required financial statements shall be certified by independent or certified public accountants.

SECTION 13. ORS 59.905 is amended to read:

59.905. (1) Except as provided in ORS 183.090, upon the entry of an order under ORS 59.840 to 59.965, the Director of the Department of Consumer and Business Services shall promptly give appropriate notice of the order as provided in this subsection. The notice shall state that a hearing will be held on the order if a written demand for hearing is filed with the director within 20 days after the date of service of the order. The notice shall be given to:

- (a) The applicant or licensee with respect to orders entered pursuant to ORS 59.865;

(b) The loan originator and the licensee employing the loan originator with respect to orders entered pursuant to section 7 of this 2001 Act; or

~~[(b)]~~ **(c)** All interested persons with respect to orders entered pursuant to any other provision of ORS 59.840 to 59.965.

(2) If timely demand for a hearing is filed by a person entitled to notice of the order, the director shall hold a hearing on the order as provided by ORS 183.310 to 183.550. In the absence of a timely demand for a hearing, ~~[no]~~ a person ~~[shall be]~~ **is not** entitled to judicial review of the order.

(3) After the hearing, the director shall enter a final order vacating, modifying or affirming the order.

(4) The director may enter a final order revoking a license notwithstanding the fact that the license has expired, if the initial order of revocation was issued prior to expiration of the license or registration.

SECTION 14. ORS 59.962 is amended to read:

59.962. (1) With the permission of the lender, note owner, note holder or other holder of an interest in a note, a mortgage banker or mortgage broker may service or collect any mortgage banking loan or mortgage loan in its own name or the name of the lender, note owner, note holder or other holder of an interest in the note.

(2) Except as provided in ORS 59.840 to 59.965, nothing in subsection (1) of this section is intended to grant the Director of the Department of Consumer and Business Services the authority to regulate the servicing or collection of any mortgage banking loan or mortgage loan by a mortgage banker or mortgage broker.

(3) As used in this section:

(a) "Mortgage banker" has the meaning given that term in ORS 59.840 ~~[(4)(a)]~~ **(5)(a)** but also includes those persons exempted from the definition of mortgage banker in ORS 59.840 ~~[(4)(b)]~~ **(5)(b)**.

(b) "Mortgage banking loan" has the meaning given that term in ORS 59.840.

(c) "Mortgage broker" has the meaning given that term in ORS 59.840.

(d) "Mortgage loan" has the meaning given that term in ORS 59.840.

(e) "Service or collect any mortgage banking loan or mortgage loan" includes but is not limited to:

(A) Holding documents or written instruments and receiving and disbursing payments according to the instructions of the parties to the documents or written instruments;

(B) Collecting or remitting, or having the right or obligation to collect or remit, for any lender, note owner, note holder or other holder of an interest in a note or for a mortgage banker's or mortgage broker's own account, payments, interest, principal and trust items, including but not limited to hazard insurance and taxes, on a mortgage banking loan or mortgage loan in accordance with the terms of the loan, and includes loan payment follow-up, delinquency loan follow-up, loan analysis and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing; and

(C) Bringing and maintaining any suit or action to collect any amounts owed on a mortgage banking loan or mortgage loan, including but not limited to the exercise of any contractual, statu-

tory or common law remedies such as injunction, specific performance, judicial or nonjudicial foreclosure or receivership.



Passed by House May 16, 2001

Received by Governor:

Repassed by House July 5, 2001

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Approved:

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Chief Clerk of House

.....M,....., 2001

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Speaker of House

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Governor

Passed by Senate July 5, 2001

Filed in Office of Secretary of State:

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President of Senate

.....M,....., 2001

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Secretary of State