

House Bill 2635

Sponsored by Representative TOMEI, Senator RINGO; Representatives ACKERMAN, DINGFELDER, GALIZIO, GARRARD, JENSON, MERKLEY, ROSENBAUM, Senators BATES, DEVLIN, GORDLY, WESTLUND

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits certain lending activities in connection with high-cost home loans. Creates private cause of action for damages.

Applies to loans for which application is first made on or after January 1, 2006.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to lending practices; creating new provisions; amending ORS 82.025 and 708A.255; and de-
3 claring an emergency.

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

5 **SECTION 1. As used in sections 1 to 7 of this 2005 Act:**

6 (1) **"Affiliate" means any company that controls, is controlled by or is under common**
7 **control with another company, as set forth in the Bank Holding Company Act of 1956 (12**
8 **U.S.C. 1841 et seq.).**

9 (2) **"Annual percentage rate" means the annual percentage rate for a home loan calcu-**
10 **lated according to the provisions of the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the**
11 **regulations adopted thereunder by the Federal Reserve Board.**

12 (3) **"Bona fide error" includes, but is not limited to, a clerical error, a calculation error,**
13 **an error resulting from a computer malfunction, a programming error or a printing error.**
14 **"Bona fide error" does not include an error of legal judgment with respect to a person's ob-**
15 **ligations under sections 2 to 5 of this 2005 Act.**

16 (4)(a) **"Bona fide loan discount points" means loan discount points knowingly paid by the**
17 **borrower and funded through any source:**

18 (A) **For the purpose of reducing the interest rate or time price differential applicable to**
19 **the home loan;**

20 (B) **That result in a bona fide reduction of the interest rate or time price differential**
21 **applicable to the home loan; and**

22 (C) **For which the amount of the interest rate reduction purchased by the discount points**
23 **is reasonably consistent with established industry norms and practices for secondary mort-**
24 **gage market transactions.**

25 (b) **For purposes of this subsection, a point is presumed to be a bona fide loan discount**
26 **point if it reduces the interest rate by a minimum of 25 basis points, provided all other terms**
27 **of the loan remain the same.**

28 (5) **"High-cost home loan" means a home loan in which the terms of the loan exceed one**
29 **or more of the thresholds defined in subsection (11) of this section.**

30 (6) **"Home loan" means a home loan, including an open-end loan plan as defined in ORS**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **725.345, other than a reverse mortgage transaction, in which:**

2 (a) **The principal amount of the loan does not exceed the lesser of:**

3 (A) **The conforming loan size limit for a comparable dwelling as established from time**
 4 **to time by the Federal National Mortgage Association; or**

5 (B) **\$300,000;**

6 (b) **The borrower is a natural person;**

7 (c) **The debt is incurred by the borrower primarily for personal, family or household**
 8 **purposes;**

9 (d) **The loan is secured by a mortgage or trust deed on real estate upon which there is**
 10 **located or is to be located a structure or structures, intended principally for occupancy of**
 11 **one to four families, that is or will be occupied by the borrower as the borrower's principal**
 12 **dwelling; and**

13 (e) **The property described in paragraph (d) of this subsection is located in this state.**

14 (7) **"Lender" means a financial institution as defined in ORS 706.008, a savings association**
 15 **as defined in ORS 722.004 or a mortgage banker as defined in ORS 59.840.**

16 (8) **"Loan flipping" means making a home loan to a borrower who refinances an existing**
 17 **home loan when the new loan does not have a tangible net benefit to the borrower consid-**
 18 **ering all of the circumstances, including the terms of both the new and refinanced loans, the**
 19 **cost of the new loan and the borrower's situation.**

20 (9) **"Points and fees" means:**

21 (a) **All items listed in 15 U.S.C. 1605(a)(1) to (4), except interest or time price differential;**

22 (b) **All charges for items listed under 12 C.F.R. 226.4(c)(7), if the lender receives direct**
 23 **or indirect compensation in connection with the charge or the charge is paid to an affiliate**
 24 **of the lender;**

25 (c) **All compensation paid directly or indirectly to a mortgage broker that is not other-**
 26 **wise included under paragraphs (a) and (b) of this subsection; and**

27 (d) **The cost of all premiums financed by the lender, directly or indirectly, for any credit**
 28 **life, credit disability, credit unemployment or credit property insurance, or any other life or**
 29 **health insurance, or any payments financed by the lender directly or indirectly for any debt**
 30 **cancellation or suspension agreement or contract. For purposes of this paragraph, insurance**
 31 **premiums calculated and paid on a monthly basis are not considered financed by the lender.**

32 (10) **"Special mortgage" means a mortgage originated, subsidized or guaranteed by or**
 33 **through a state, tribal or local government or a nonprofit organization that bears a below-**
 34 **market interest rate at the time of origination or has nonstandard payment terms beneficial**
 35 **to the borrower. For purposes of this subsection, "nonstandard payment terms" includes, but**
 36 **is not limited to:**

37 (a) **Payments that vary with income;**

38 (b) **Payments that are limited to a percentage of income; and**

39 (c) **Specified conditions under which no payments are required.**

40 (11) **"Thresholds" means:**

41 (a) **For a first lien mortgage loan, the annual percentage rate of the home loan at con-**
 42 **summation of the transaction exceeds eight percentage points over the yield on United**
 43 **States Government securities having comparable periods of maturity to the loan maturity**
 44 **measured as of the 15th day of the month immediately preceding the month in which the**
 45 **application for extension of credit is received by the lender. If the terms of the home loan**

1 offer any initial or introductory period and the annual percentage rate is less during that
 2 period than the rate that will apply after the end of the initial or introductory period, the
 3 annual percentage rate considered for purposes of this paragraph shall be the rate that ap-
 4 plies after the initial or introductory period;

5 (b) For a subordinate mortgage lien, the annual percentage rate of the home loan at
 6 consummation of the transaction equals or exceeds nine percentage points over the yield on
 7 United States Government securities having comparable periods of maturity on the 15th day
 8 of the month immediately preceding the month in which the application for extension of
 9 credit is received by the lender. If the terms of the home loan offer any initial or introduc-
 10 tory period and the annual percentage rate is less during that period than the rate that will
 11 apply after the end of the initial or introductory period, the annual percentage rate consid-
 12 ered for purposes of this paragraph shall be the rate that applies after the initial or intro-
 13 ductory period; or

14 (c) The total points and fees applicable to the home loan exceed five percent of the total
 15 loan amount if the total loan amount is \$50,000 or more, six percent of the total loan amount
 16 if the total loan amount is \$50,000 or more and the loan is a purchase money loan guaranteed
 17 by the Federal Housing Administration or the United States Department of Veterans Affairs,
 18 or the greater of six percent of the total loan amount or \$1,500, if the total loan amount is
 19 less than \$50,000. For purposes of this paragraph, the following discount points are excluded
 20 from the calculation of the total points and fees payable by the borrower:

21 (A) Up to and including two bona fide loan discount points payable by the borrower in
 22 connection with the loan transaction, if the interest rate from which the loan's interest rate
 23 will be discounted does not exceed by more than one percentage point the yield on United
 24 States Government securities having comparable periods of maturity to the loan maturity
 25 measured as of the 15th day of the month immediately preceding the month in which the
 26 application is received; and

27 (B) Any and all bona fide loan discount points funded directly or indirectly through a
 28 grant from a federal, state or local government agency or an organization that is recognized
 29 as tax exempt under section 501(c)(3) of the Internal Revenue Code.

30 (12) "Total loan amount" means the principal of the loan minus points and fees that are
 31 included in the principal amount.

32 **SECTION 2.** (1)(a) A high-cost home loan may not contain a provision that permits the
 33 lender, in the lender's sole discretion, to accelerate payments required under the loan.

34 (b) This subsection does not prohibit any good faith acceleration of payments required
 35 under the loan due to the borrower's failure to abide by the material terms of the loan.

36 (2)(a) A high-cost home loan may not contain a scheduled payment that is more than
 37 twice as large as the average of earlier scheduled payments, unless the larger payment be-
 38 comes due and payable at least 15 years after the origination date of the loan.

39 (b) This subsection does not apply when the payment schedule is adjusted to the seasonal
 40 or irregular income of the borrower.

41 (3) A high-cost home loan may not contain a payment schedule with regular periodic
 42 payments that cause the principal balance of the loan to increase.

43 (4)(a) A high-cost home loan may not contain a provision that increases the interest rate
 44 on the loan after default.

45 (b) This subsection does not apply to interest rate changes in a variable rate loan if the

1 changes are consistent with the provisions of the loan documents and are not triggered by
 2 the event of default or the acceleration of payments required under the loan.

3 (5) A high-cost home loan may not include terms under which more than two periodic
 4 payments required under the loan are consolidated and paid in advance from the loan pro-
 5 ceeds provided to the borrower.

6 (6)(a) A lender may not charge a borrower any fees to modify, renew, extend or amend
 7 a high-cost home loan or to defer any payment due under the terms of a high-cost home loan
 8 if, after the modification, renewal, extension or amendment:

9 (A) The loan is still a high-cost home loan; or

10 (B) The loan is no longer a high-cost home loan, but the annual percentage rate has not
 11 been decreased by at least two percentage points.

12 (b) For purposes of this subsection, fees do not include interest that is otherwise payable
 13 and consistent with the provisions of the loan documents.

14 (c) This subsection does not prohibit a lender from charging points and fees in connection
 15 with any additional proceeds, over and above the current principal balance of the existing
 16 high-cost home loan, received by the borrower in connection with the modification, renewal,
 17 extension or amendment. Points and fees charged on the additional proceeds must reflect the
 18 lender's typical point and fee structure for high-cost home loans.

19 (7) A high-cost home loan may not be subject to a mandatory arbitration clause that is
 20 oppressive, unfair, unconscionable or substantially in derogation of the rights of consumers.

21 (8)(a) A high-cost home loan may not finance, directly or indirectly, any credit life, credit
 22 disability, credit unemployment or credit property insurance premiums, any other life or
 23 health insurance premiums or any payments directly or indirectly for any debt cancellation
 24 or suspension agreement or contract.

25 (b) For purposes of this subsection, insurance premiums or debt cancellation or suspen-
 26 sion fees calculated and paid on a monthly basis are not considered financed by the loan.

27 (9) A lender or mortgage broker making or arranging a high-cost home loan may not
 28 engage in loan flipping.

29 (10)(a) A lender making a high-cost home loan may not refinance an existing home loan
 30 that is a special mortgage if, as a result of the refinancing, the borrower will lose one or
 31 more of the benefits of the special mortgage.

32 (b) This subsection does not apply if the lender receives, prior to the date the refinancing
 33 loan closes, written documentation stating that the borrower has received home loan coun-
 34 seling that describes the advantages and disadvantages of the refinancing. The counseling
 35 must have been received from a consumer credit counselor certified under federal law or
 36 from the lender who originated, subsidized or guaranteed the special mortgage loan.

37 (11) A lender or mortgage broker may not make or arrange a high-cost home loan with-
 38 out regard to the ability of the borrower to repay the loan. The lender or mortgage broker
 39 shall consider the borrower's current and expected income, current obligations, employment
 40 status and other financial resources, other than the borrower's equity in the dwelling that
 41 secures repayment of the loan, as verified by detailed documentation of all sources of income
 42 and corroborated by independent verification. There is a rebuttable presumption that a loan
 43 is made with regard to repayment ability if the lender or mortgage broker demonstrates that
 44 at the time the loan is consummated the borrower's total monthly debts, including amounts
 45 owed under the loan, do not exceed 50 percent of the resident borrower's monthly gross in-

1 come and the lender follows the residual income guidelines established in 38 C.F.R. 36.4337(e).

2 (12) In making a high-cost home loan, a lender may not, directly or indirectly, finance
3 any points and fees in an amount that exceeds three percent of the principal amount of the
4 loan.

5 (13) A lender may not pay a contractor under a home improvement contract from the
6 proceeds of a high-cost home loan other than:

7 (a) By an instrument payable to the borrower or jointly to the borrower and the con-
8 tractor; or

9 (b) At the election of the borrower, through a third-party escrow agent in accordance
10 with terms established in a written agreement signed by the borrower, the lender and the
11 contractor prior to the disbursement.

12 (14) In making or arranging a high-cost home loan, a lender or mortgage broker may not
13 recommend or encourage default on an existing loan or other debt prior to and in connection
14 with the closing or planned closing of a high-cost home loan that refinances all or any por-
15 tion of the existing loan or debt.

16 (15) In making or arranging a high-cost home loan, a lender or mortgage broker may not
17 accept or give any fee, kickback, thing of value, portion, split or percentage of charges, other
18 than as payment for goods or facilities that were actually furnished or services that were
19 actually performed. The payment must be reasonably related to the value of the goods or
20 facilities that were actually furnished or services that were actually performed.

21 (16) A lender may not charge a borrower points and fees in connection with a high-cost
22 home loan if the proceeds of the high-cost home loan are used to refinance an existing
23 high-cost home loan held by the lender or an affiliate of the lender.

24 **SECTION 3.** (1) A lender or mortgage broker must deliver, mail, fax or electronically
25 transmit the following notice in at least 12-point type to the borrower at the time the bor-
26 rower applies for a high-cost home loan:

27
28
29 **NOTICE TO BORROWER**

30 You should consider financial counseling prior to executing loan documents. The enclosed
31 list of consumer credit counselors is provided by the Department of Consumer and Business
32 Services.

33
34
35 (2) In the event of a telephone application, the notice described in subsection (1) of this
36 section must be provided immediately after receipt of the telephone application. The notice
37 shall be separate from any loan application documents. In order to provide the notice or loan
38 documents using an electronic transmission, the lender or mortgage broker must first obtain
39 written or electronically transmitted permission from the borrower.

40 (3) The Department of Consumer and Business Services shall prepare and make available
41 a list of consumer credit counselors qualified to advise borrowers with respect to high-cost
42 home loans. The lender or mortgage broker shall provide the list of consumer credit coun-
43 selors to the borrower at the time that the notice described in subsection (1) of this section
44 is given.

45 **SECTION 4.** (1) A lender or mortgage broker may not make or arrange a high-cost home

1 loan unless the lender or mortgage broker has given the following notice in writing to the
2 borrower within three days after determining that the loan is a high-cost home loan, but no
3 later than 10 days before the closing date of the loan:

4
5
6 **CONSUMER CAUTION AND**
7 **HOMEOWNERSHIP COUNSELING NOTICE**
8

9 **If you obtain this loan, which under Oregon law is a high-cost home loan, the lender will have**
10 **a mortgage on your home. You could lose your home, and any money you have put into it,**
11 **if you do not meet your obligations under the loan.**

12
13 **You should shop around and compare loan rates and fees. Mortgage loan rates and closing**
14 **costs and fees vary based on many factors, including your particular credit and financial**
15 **circumstances, your earnings history, the loan-to-value requested and the type of property**
16 **that will secure your loan. The loan rate and fees could vary based on which lender or**
17 **mortgage broker you select. Higher rates and fees may be related to the individual circum-**
18 **stances of a particular consumer's application.**

19
20 **You should consider consulting a qualified consumer credit counselor or other experienced**
21 **financial adviser regarding the rate, fees and provisions of this mortgage loan before you**
22 **proceed.**

23
24 **You are not required to complete any loan agreement merely because you have received**
25 **these disclosures or have signed a loan application.**

26
27 **If you proceed with this mortgage loan, you should also remember that you may face serious**
28 **financial risks if you use this loan to pay off credit card debts and other debts in connection**
29 **with this transaction and then subsequently incur significant new credit card charges or**
30 **other debts. If you continue to accumulate debt after this loan is closed and then experience**
31 **financial difficulties, you could lose your home and any equity you have in it if you do not**
32 **meet your mortgage loan obligations.**

33
34 **Property taxes and homeowner's insurance are your responsibility. Not all lenders provide**
35 **escrow services for these payments. You should ask your lender about these services.**

36
37 **Your payments on existing debts contribute to your credit ratings. You should not accept**
38 **any advice to ignore your regular payments to your existing creditors. Accordingly, it is**
39 **important that you make regular payments to your existing creditors.**

40
41
42 **(2) Documents creating a high-cost home loan must state that the mortgage is a high-**
43 **cost home loan subject to sections 1 to 7 of this 2005 Act. The statement must be printed in**
44 **at least 12-point type on top of the first page of the mortgage documents.**

45 **SECTION 5. (1) If a lender makes a high-cost home loan subject to sections 1 to 7 of this**

1 2005 Act, the lender shall report both the favorable and unfavorable payment history of the
 2 borrower to a nationally recognized consumer reporting agency at least once per calendar
 3 year during the period that the lender holds or services the high-cost home loan.

4 (2) Sections 1 to 7 of this 2005 Act apply to any person that in bad faith attempts to avoid
 5 the application of sections 1 to 7 of this 2005 Act by any subterfuge, including but not limited
 6 to splitting or dividing any loan transaction into separate parts for the purpose of evading
 7 the provisions of sections 1 to 7 of this 2005 Act.

8 **SECTION 6.** (1) Except as provided in subsection (2) of this section, a lender employs an
 9 unconscionable tactic under ORS 646.607 if the lender violates any provision of sections 2 to
 10 5 of this 2005 Act.

11 (2) If a lender making a high-cost home loan fails to comply with the provisions of
 12 sections 2 to 5 of this 2005 Act and the lender is acting in good faith, the lender is not con-
 13 sidered to have violated a provision of sections 2 to 5 of this 2005 Act if:

14 (a) Within 30 days after the loan closing date and prior to the institution of any action
 15 under section 7 of this 2005 Act, the lender:

16 (A) Notifies the borrower of the compliance failure;

17 (B) Makes appropriate restitution to the borrower; and

18 (C) Adjusts the terms of the loan in a manner beneficial to the borrower so that the loan,
 19 at the choice of the borrower, satisfies the requirements of sections 1 to 7 of this 2005 Act
 20 or is no longer a high-cost home loan subject to the provisions of sections 1 to 7 of this 2005
 21 Act; or

22 (b) Within 60 days after the loan closing date and prior to the institution of any action
 23 under section 7 of this 2005 Act or receipt of written notice of the compliance failure, the
 24 lender:

25 (A) Notifies the borrower of the compliance failure;

26 (B) Makes appropriate restitution to the borrower;

27 (C) Adjusts the terms of the loan in a manner beneficial to the borrower so that the loan,
 28 at the choice of the borrower, satisfies the requirements of sections 1 to 7 of this 2005 Act
 29 or is no longer a high-cost home loan subject to the provisions of sections 1 to 7 of this 2005
 30 Act; and

31 (D) Can show that the compliance failure resulted from a bona fide error made despite
 32 maintenance of procedures reasonably intended to prevent the type of error.

33 **SECTION 7.** (1) Any party to a high-cost home loan that is damaged by a violation of any
 34 provision of sections 2 to 5 of this 2005 Act may bring a civil action to recover damages as
 35 described in this section.

36 (2) Upon commencement of an action brought under this section, the party bringing the
 37 action shall mail a copy of the complaint or other initial pleading to the Attorney General
 38 and, upon entry of a judgment or decree in the action, shall mail a copy of the judgment or
 39 decree to the Attorney General. Failure to mail a copy of the complaint is not a jurisdictional
 40 defect, but a judgment may not be entered for the plaintiff until proof of mailing is filed with
 41 the court. Proof of mailing may be by affidavit or by return receipt of mailing.

42 (3) Except as provided in subsection (4) of this section, any person found to have violated
 43 any provision of sections 2 to 5 of this 2005 Act shall be liable to the borrower for:

44 (a) Actual damages; and

45 (b) An amount equal to all of the interest, earned or unearned, points and fees and

1 closing costs paid on the loan.

2 (4) Any person found to have violated section 2 (9) or (11) of this 2005 Act shall be liable
3 to the borrower for \$5,000 per violation or twice the amount of points and fees and closing
4 costs, whichever is greater.

5 (5) A court may award reasonable attorney fees to a prevailing plaintiff.

6 (6) A plaintiff may be granted injunctive, declaratory and such other equitable relief as
7 the court deems appropriate in an action to enforce compliance with sections 2 to 5 of this
8 2005 Act.

9 (7) A permanent injunction or final judgment or order of the court based on a violation
10 of any provision of sections 2 to 5 of this 2005 Act and made under ORS 646.632 or 646.636
11 shall be prima facie evidence in an action brought under this section that the defendant vi-
12 olated sections 2 to 5 of this 2005 Act. An assurance of voluntary compliance, whether or not
13 approved by the court, is not evidence of a violation.

14 (8) Upon a finding by a court of an intentional violation by a lender of any provision of
15 sections 2 to 5 of this 2005 Act, the home loan agreement shall be rendered void and the
16 lender shall have no right to collect, receive or retain any principal, interest or other charges
17 with respect to the loan. The borrower may recover any payments made under the agree-
18 ment.

19 (9) Upon a finding by a court that a high-cost home loan violates any provision of
20 sections 2 to 5 of this 2005 Act, whether the violation is raised as an affirmative claim or as
21 a defense, the loan transaction may be rescinded. The remedy of rescission shall be available
22 without time limitation.

23 (10) The remedies provided in this section are not intended to be the exclusive remedies
24 available to a borrower of a high-cost home loan.

25 (11) An action against a lender or mortgage broker under this section must be com-
26 menced within six years of origination of the high-cost home loan. When a complaint is filed
27 by a prosecuting attorney to prevent, restrain or punish violation of any provision of sections
28 2 to 5 of this 2005 Act, running of the statute of limitations with respect to a private right
29 of action under this section and based in whole or in part on a matter complained of in the
30 proceeding shall be suspended during the pendency of the proceeding.

31 **SECTION 8.** Section 9 of this 2005 Act is added to and made a part of ORS chapter 88.

32 **SECTION 9.** (1) Any complaint served in a suit initiated under this chapter and relating
33 to a high-cost home loan, as defined in section 1 of this 2005 Act, must contain an affirmative
34 allegation that the plaintiff has complied with the provisions of sections 2 to 6 of this 2005
35 Act. The allegation must be proven to the satisfaction of the court before entry of judgment
36 by default or otherwise.

37 (2) It is a defense to an action to foreclose a mortgage that the high-cost home loan, as
38 defined in section 1 of this 2005 Act, violates any provision of sections 2 to 6 of this 2005 Act.

39 (3) In any action by an assignee to enforce a high-cost home loan, as defined in section
40 1 of this 2005 Act, against a borrower in default more than 60 days or in foreclosure, the
41 borrower may assert any claims in recoupment and defenses to payment under sections 2 to
42 6 of this 2005 Act with respect to the loan, without time limitations, that the borrower could
43 assert against the original lender of the loan.

44 **SECTION 10.** Sections 1 to 9 of this 2005 Act and the amendments to ORS 82.025 and
45 708A.255 by sections 12 and 13 of this 2005 Act become operative on January 1, 2006.

1 **SECTION 11.** The Director of the Department of Consumer and Business Services may
 2 take any action under sections 1 to 9 of this 2005 Act and the amendments to ORS 82.025 and
 3 708A.255 by sections 12 and 13 of this 2005 Act prior to the operative date of sections 1 to 9
 4 of this 2005 Act and the amendments to ORS 82.025 and 708A.255 by sections 12 and 13 of this
 5 2005 Act that is necessary to enable the director to exercise, on and after the operative date
 6 of sections 1 to 9 of this 2005 Act and the amendments to ORS 82.025 and 708A.255 by sections
 7 12 and 13 of this 2005 Act, all the duties, functions and powers conferred on the director by
 8 sections 1 to 9 of this 2005 Act and the amendments to ORS 82.025 and 708A.255 by sections
 9 12 and 13 of this 2005 Act.

10 **SECTION 12.** ORS 82.025 is amended to read:

11 82.025. ORS 82.010 (3) and (4) and 82.020 do not apply to:

12 (1) Any financial institution or trust company, as those terms are defined in ORS 706.008, any
 13 consumer finance licensee under ORS chapter 725, or any pawnbroker licensed under ORS chapter
 14 726.

15 (2) Any lender approved by the Secretary of Housing and Urban Development of the United
 16 States for participation in any mortgage insurance program under the National Housing Act (12
 17 U.S.C. 1701 et seq.).

18 (3) Any loan secured by a first lien on real property or made to finance the acquisition of real
 19 property and secured by any lien on that property.

20 (4) Any loan which is secured by real property, which is scheduled under the loan agreement
 21 to be repaid in substantially equal payments and which is made by a lender described in this sub-
 22 section. A lender under this subsection is one who makes, invests in or arranges real property loans,
 23 including loans secured by first liens on residential manufactured homes, aggregating more than \$1
 24 million per year. Under this subsection, payments shall be "substantially equal" if, under the terms
 25 of the loan agreement, no single scheduled payment is more than twice the amount of any other
 26 scheduled payment.

27 (5) Any loan wholly or partially secured or covered by guarantees or insurance by the Federal
 28 Housing Administration, the United States Department of Veterans Affairs or the Farmers Home
 29 Administration of the United States, any department, bureau, board, commission or agency of the
 30 United States, or any corporation wholly owned, directly or indirectly by the United States.

31 (6) Any loan permitted under applicable federal law and regulations from a tax qualified retire-
 32 ment plan to a person then a participant under the plan.

33 (7) Any bona fide sale or resale of securities or commercial paper.

34 (8) Any interest charge by broker-dealers registered under the Securities Exchange Act of 1934
 35 for carrying a debit balance in an account for a customer if the debit balance is payable on demand
 36 and secured by stocks or bonds.

37 **(9) Any high-cost home loan, as defined in section 1 of this 2005 Act.**

38 **SECTION 13.** ORS 708A.255 is amended to read:

39 708A.255. (1) Except as otherwise provided in this section **or sections 2 to 5 of this 2005 Act**,
 40 there is no limitation on the rate of interest or on the amount of other charges that a financial in-
 41 stitution may contract for and receive for a loan or use of money.

42 (2) If a loan made by a financial institution is repaid before maturity, the unearned portion of
 43 the charges, if any, shall be refunded or credited to the borrower as provided in this subsection. The
 44 amount of the refund shall not be less than the total interest contracted for to maturity, less the
 45 greater of:

1 (a) Ten percent of the amount financed, or \$75, whichever is less; or
 2 (b) The interest earned to the installment due date nearest the date of prepayment, computed
 3 by applying the simple interest rate of the loan to the actual principal balances outstanding, for the
 4 periods of time the balances were actually outstanding. For purposes of rebate computations under
 5 this paragraph, the installment due date preceding the date of prepayment shall be considered to
 6 be nearest if prepayment occurs 15 days or less after that installment date. If prepayment occurs
 7 more than 15 days after the preceding installment due date, the next succeeding installment due date
 8 shall be considered to be nearest the date of prepayment. In determining the simple interest rate,
 9 the lender may apply to the scheduled payments the actuarial method, by which each scheduled
 10 payment is applied first to accrued and unpaid interest and any amount remaining is applied to re-
 11 duction of the principal balance.

12 (3) Any installment of an installment loan or payment under an open-end credit arrangement
 13 that is not paid when due shall continue to bear interest until paid. In addition, if the installment
 14 or payment is not paid when due, the installment or payment may bear a late charge in such amount
 15 as is agreed to by the lender and the borrower. However, except for loans secured by real property,
 16 the lender may impose a late charge only if:

17 (a) The installment or payment is not received by the lender within 10 days after the due date
 18 or, if the open-end credit arrangement is a credit card account, the payment is not received by the
 19 lender on or before the due date;

20 (b) The loan agreement or open-end credit arrangement provides for a late charge upon delin-
 21 quent installments or payments; and

22 (c) A monthly billing, coupon or notice is provided by the lender disclosing the date on which
 23 installments or payments are due and that a late charge may be imposed if payment is not received
 24 by the lender within 10 days thereafter or, in the case of an open-end credit arrangement that is a
 25 credit card account, that a late charge may be imposed if payment is not received by the lender on
 26 or before the date on which the payment is due. However, if the lender and the borrower have
 27 provided in the note or other written loan agreement that the payments on the loan shall be made
 28 by the means of automatic deductions from a deposit account maintained by the borrower, the lender
 29 shall not be required to provide the borrower with a monthly billing, coupon or notice under this
 30 paragraph with respect to any occasion on which there are insufficient funds in the borrower's ac-
 31 count to cover the amount of a loan payment on the date the loan payment becomes due and within
 32 the periods described in paragraph (a) of this subsection.

33 **SECTION 14. Sections 1 to 7 and 9 of this 2005 Act and the amendments to ORS 82.025**
 34 **and 708A.255 by sections 12 and 13 of this 2005 Act apply to loans for which application is first**
 35 **made on or after the operative date of sections 1 to 9 of this 2005 Act and the amendments**
 36 **to ORS 82.025 and 708A.255 by sections 12 and 13 of this 2005 Act.**

37 **SECTION 15. This 2005 Act being necessary for the immediate preservation of the public**
 38 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
 39 **on its passage.**

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