

A-Engrossed
House Bill 2637

Ordered by the House March 29
Including House Amendments dated March 29

Sponsored by COMMITTEE ON BUSINESS, LABOR AND CONSUMER AFFAIRS (at the request of Oregon Association of Mortgage Professionals)

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.

Limits right of action against mortgage banker or mortgage broker surety bond or irrevocable letter of credit to persons who sign mortgage banking loan or mortgage loan application.

Removes criminal penalty for violation of loan originator continuing education requirements.

Requires that loan originator examinations be provided at secure location. Allows Department of Consumer and Business Services to certify organization to approve or provide examination if organization is experienced in *[approving or providing loan originator examinations]* **professional test administration.**

A BILL FOR AN ACT

1
2 Relating to mortgage lenders; creating new provisions; and amending ORS 59.925, 59.977 and 59.992.

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

4 **SECTION 1.** ORS 59.925 is amended to read:

5 59.925. (1) As used in this section, "mortgage banker transaction" and "mortgage broker trans-
6 action" mean a transaction in which a person, in order to engage in the transaction, is required to
7 be licensed as a mortgage banker or a mortgage broker under ORS 59.840 to 59.980.

8 (2) A mortgage banker or mortgage broker is liable as provided in subsection (3) of this section
9 to any person who suffers any ascertainable loss of money or property, real or personal, in a mort-
10 gage banker transaction or a mortgage broker transaction if the mortgage banker or mortgage
11 broker:

12 (a) Transacts business as a mortgage banker or mortgage broker in violation of any provision
13 of ORS 59.840 to 59.980; or

14 (b) Transacts business as a mortgage banker or mortgage broker by means of an untrue state-
15 ment of a material fact or an omission to state a material fact necessary in order to make the
16 statements made, in light of the circumstances under which they are made, not misleading, and who
17 does not sustain the burden of proof that the person did not know, and in the exercise of reasonable
18 care could not have known, of the untruth or omission.

19 (3) The person suffering ascertainable loss may recover damages in an amount equal to the
20 ascertainable loss.

21 (4) A person whose sole function in connection with a transaction is to provide ministerial
22 functions of escrow, custody or deposit services in accordance with applicable law is liable only if
23 the person participates or materially aids in the transaction and the plaintiff sustains the burden
24 of proof that the person knew of the existence of the facts on which liability is based or that the
25 person's failure to know of the existence of such facts was the result of the person's recklessness

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 or gross negligence.

2 (5) Except as otherwise provided in this subsection, [no] **an** action or suit may **not** be com-
3 menced under this section more than three years after the transaction. An action under this section
4 for a violation under subsection (2)(b) of this section or ORS 59.930 may be commenced within three
5 years after the transaction or two years after the person bringing the action discovered or should
6 have discovered the facts on which the action is based, whichever is later, but in no event more
7 than five years after the date of the transaction. Failure to commence an action on a timely basis
8 is an affirmative defense.

9 (6) [*Any person having a right of action against a mortgage banker or mortgage broker shall under*
10 *this section have*] **A person has** a right of action under the bond or irrevocable letter of credit
11 provided in ORS 59.850 **if the person:**

12 **(a) Signs a mortgage banking loan or mortgage loan application; and**

13 **(b) Has a right of action against a mortgage banker or mortgage broker under this sec-**
14 **tion.**

15 (7) Subsection (4) of this section [*shall*] **does** not limit the liability of any person:

16 (a) For conduct other than in the circumstances described in subsection (4) of this section; or

17 (b) Under any other law.

18 (8) Except as provided in subsection (9) of this section, the court may award reasonable attorney
19 fees to the prevailing party in an action under this section.

20 (9) The court may not award attorney fees to a prevailing defendant under the provisions of
21 subsection (8) of this section if the action under this section is maintained as a class action pursuant
22 to ORCP 32.

23 **SECTION 2.** ORS 59.992 is amended to read:

24 59.992. (1) Violation of any provision of ORS 59.840 to 59.980 or any rule adopted by the Director
25 of the Department of Consumer and Business Services under ORS 59.840 to 59.980, except ORS
26 59.915 (2) **and 59.975**, is a Class C felony.

27 (2) Violation of ORS 59.915 (2) is a Class A misdemeanor.

28 **SECTION 3.** ORS 59.977 is amended to read:

29 59.977. (1) The Director of the Department of Consumer and Business Services may certify an
30 organization as qualified to approve or provide entry-level training or continuing education curric-
31 ula and testing for loan originators. The director, by rule, shall establish criteria for certifying an
32 organization under this subsection.

33 **(2) An organization certified by the director to approve or provide loan originator exam-**
34 **inations must be experienced in professional test administration.**

35 **(3) All loan originator examinations shall be conducted at a secure location to protect the**
36 **integrity of the testing process.**

37 [(2)] (4) The director, by rule, may provide for the acceptance or conditional acceptance of
38 continuing education hours completed pursuant to the laws of another state that the director de-
39 termines provide protection to the public that exceeds or is substantially similar to the protection
40 provided by ORS 59.840 to 59.980.

41 **SECTION 4.** (1) **The amendments to ORS 59.925 by section 1 of this 2005 Act apply only**
42 **to persons who sign a mortgage banking loan or mortgage loan application on or after the**
43 **effective date of this 2005 Act.**

44 **(2) The amendments to ORS 59.992 by section 2 of this 2005 Act apply only to activities**
45 **occurring on or after the effective date of this 2005 Act.**

- 1 **(3) The amendments to ORS 59.977 by section 3 of this 2005 Act apply only to:**
2 **(a) Organizations certified on or after the effective date of this 2005 Act; and**
3 **(b) Examinations conducted on or after the effective date of this 2005 Act.**

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