

House Bill 2874

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 **as introduced**.

Requires mortgage loan originators to be certified by Department of Consumer and Business Services. Specifies certification requirements.

Requires fingerprint identification in criminal records checks for loan originators.

Modifies definition of loan originator to exclude independent contractors.

Requires department to conduct regular and periodic examinations of loan originators, mortgage brokers and mortgage bankers.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to mortgage lending; creating new provisions; amending ORS 59.840, 59.865, 59.880, 59.969,
3 59.970 and 59.972; and declaring an emergency.

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

5 **SECTION 1. Sections 2 to 6 of this 2005 Act are added to and made a part of ORS 59.840**
6 **to 59.980.**

7 **SECTION 2. (1) A person may not engage in residential mortgage transactions in this**
8 **state as a loan originator unless the person is certified under ORS 59.840 to 59.980.**

9 **(2) For purposes of this section, a person "engages in residential mortgage transactions**
10 **in this state" when any act constituting the business of a loan originator and involving a**
11 **residential mortgage transaction originates from this state or is directed to and received in**
12 **this state or when the real estate that is the subject of the activities of the loan originator**
13 **is located in this state.**

14 **SECTION 3. (1) The Director of the Department of Consumer and Business Services by**
15 **rule shall establish procedures for certifying loan originators subject to the requirements of**
16 **ORS 59.840 to 59.980.**

17 **(2) To qualify for certification, an applicant for certification or renewal of certification**
18 **as a loan originator shall show that the applicant has:**

19 **(a) Successfully completed an entry-level training course approved or provided by the**
20 **Department of Consumer and Business Services or an organization certified by the director**
21 **as described in ORS 59.977;**

22 **(b) Passed an examination, approved or provided by the department or an organization**
23 **certified by the director as described in ORS 59.977, on laws and rules relating to mortgage**
24 **lending in this state; and**

25 **(c) If the applicant has been employed or certified as a loan originator for two or more**
26 **years in this state, completed continuing education as required by the director under ORS**
27 **59.975.**

28 **(3) A certified loan originator shall amend the certification application when there are**

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 **material changes in the information contained in the original application.**

2 (4) **A certified loan originator shall notify the director within 30 days after the loan**
 3 **originator terminates or changes employment with a mortgage banker or mortgage broker.**

4 (5) **The director shall:**

5 (a) **Charge and collect fees for initial and renewal certificate applications; and**

6 (b) **Set by rule all fees required under this section. Fees shall be set to reflect those**
 7 **amounts sufficient to meet the costs of administering ORS 59.840 to 59.980.**

8 **SECTION 4. (1) The initial certificate of a loan originator expires one year after the date**
 9 **of issuance unless the Director of the Department of Consumer and Business Services es-**
 10 **tablishes a different expiration date.**

11 (2) **The director by rule shall establish procedures for renewing certificates of loan origi-**
 12 **inators. The rules shall specify the duration of renewed certificates.**

13 **SECTION 5. (1) Except as provided in subsections (2) and (3) of this section, the Director**
 14 **of the Department of Consumer and Business Services may by order deny, suspend, condition**
 15 **or revoke a certificate of a person as a loan originator if the director finds the applicant or**
 16 **certified loan originator has violated ORS 59.971.**

17 (2) **If the director finds that an applicant or certified loan originator has ceased to do**
 18 **business as a loan originator or cannot be located after a reasonable search, the director**
 19 **may cancel the certificate or application.**

20 (3) **A loan originator may withdraw from certification by filing an application to with-**
 21 **draw. Unless the director determines that the certificate should be suspended or revoked,**
 22 **the director shall allow the withdrawal subject to any conditions, limitations and restrictions**
 23 **the director may impose.**

24 **SECTION 6. The Director of the Department of Consumer and Business Services by rule**
 25 **shall maintain and make available to the public a current list of:**

26 (1) **All certified or previously certified loan originators;**

27 (2) **All complaints received against each loan originator; and**

28 (3) **All violations committed by each loan originator under ORS 59.840 to 59.980.**

29 **SECTION 7. ORS 59.969 is amended to read:**

30 59.969. (1) **A mortgage banker or mortgage broker must provide to the Director of the Depart-**
 31 **ment of Consumer and Business Services, and keep current, a list of loan originators employed by**
 32 **the banker or broker. The banker or broker shall notify the director within 30 days of the employ-**
 33 **ment or termination of employment of a loan originator.**

34 (2) **An applicant for issuance of a mortgage banker or mortgage broker license under ORS 59.850**
 35 **shall include with the application evidence acceptable to the director that each individual the ap-**
 36 **plicant has hired or intends to hire as a loan originator is certified under section 3 of this 2005**
 37 **Act. [has:]**

38 *[(a)(A) Successfully completed an entry-level training course approved or provided by an organ-*
 39 *ization certified by the director as described in ORS 59.977; and]*

40 *[(B) Passed an examination, approved or provided by an organization described in ORS 59.977,*
 41 *on laws and rules relating to mortgage lending in this state; or]*

42 *[(b) If the individual has been employed as a loan originator for two or more years in this state,*
 43 *completed continuing education as required by the director pursuant to ORS 59.975.]*

44 (3) **A mortgage banker or mortgage broker that applies for renewal of a license [pursuant to]**
 45 **under ORS 59.855 shall include with the application evidence acceptable to the director that each**

1 individual employed by the banker or broker as a loan originator **is certified under section 3 of**
2 **this 2005 Act.** [has:]

3 [(a)(A) *Successfully completed an entry-level training course approved or provided by an organ-*
4 *ization certified by the director as described in ORS 59.977; and]*

5 [(B) *Passed an examination, approved or provided by an organization described in ORS 59.977,*
6 *on laws and rules relating to mortgage lending in this state; or]*

7 [(b) *If the individual has been employed as a loan originator for two or more years in this state,*
8 *completed continuing education as required by the director pursuant to ORS 59.975.]*

9 (4) An applicant for issuance of a mortgage banker or mortgage broker license under ORS 59.850
10 shall include with the application evidence acceptable to the director that each individual the ap-
11 plicant has hired or intends to hire who is an insurance agent or insurance consultant licensed un-
12 der ORS 744.002 and who is a full-time loan originator as defined in ORS 59.970 **is certified under**
13 **section 3 of this 2005 Act.** [has:]

14 [(a)(A) *Successfully completed an entry-level training course approved or provided by an organ-*
15 *ization certified by the director as described in ORS 59.977; and]*

16 [(B) *Passed an examination, approved or provided by an organization described in ORS 59.977,*
17 *on laws and rules relating to mortgage lending in this state; or]*

18 [(b) *If the individual has been employed as a full-time loan originator for two or more years in this*
19 *state, completed continuing education as required by the director pursuant to ORS 59.975.]*

20 (5) A mortgage banker or mortgage broker that applies for renewal of a license [pursuant to]
21 **under** ORS 59.855 shall include with the application evidence acceptable to the director that each
22 individual employed by the mortgage banker or mortgage broker as a loan originator who is an in-
23 surance agent or insurance consultant licensed under ORS 744.002 and who is a full-time loan origi-
24 nator as defined in ORS 59.970 **is certified under section 3 of this 2005 Act.** [has:]

25 [(a)(A) *Successfully completed an entry-level training course approved or provided by an organ-*
26 *ization certified by the director as described in ORS 59.977; and]*

27 [(B) *Passed an examination, approved or provided by an organization described in ORS 59.977,*
28 *on laws and rules relating to mortgage lending in this state; or]*

29 [(b) *If the individual has been employed as a full-time loan originator for two or more years in this*
30 *state, completed continuing education as required by the director pursuant to ORS 59.975.]*

31 (6) An applicant under subsection (2), (3), (4) or (5) of this section shall, at the time of applica-
32 tion, certify that the applicant has conducted criminal records checks required under ORS 59.970
33 and 59.972 and:

34 (a) Certify that, to the best of the applicant's belief, no individual the applicant employs or in-
35 tends to employ as a loan originator has engaged in conduct that would constitute a violation of
36 ORS 59.967 (2) or 59.971; or

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

39 (7) Except as provided in subsections (4) and (5) of this section, a mortgage banker or mortgage
40 broker may voluntarily report to the director regarding employees who would qualify as loan origi-
41 nators if not exempted under ORS 59.840 (4). Voluntary reporting by a banker or broker under this
42 subsection does not make the reported employees subject to **certification**, training, examination or
43 continuing education requirements or other laws governing loan originators.

44 (8) The director shall keep records that include notifications filed under subsection (1) of this
45 section and exceptions to certifications under subsection (6) of this section. The director shall re-

tain 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]* **under** ORS 59.973.

(9) Notwithstanding subsections (1) to (5) of this section and ORS 59.865 (17), 59.970, 59.971 (1)(d) and 59.975, the director, by rule, may waive any **certification**, training, examination or continuing education requirement for a loan originator for a period not to exceed six months after the individual begins or resumes employment as a loan originator.

SECTION 8. ORS 59.970 is amended to read:

59.970. (1) As used in this section, “loan originator” means an individual who:

(a) Is an insurance agent or insurance consultant licensed under ORS 744.002;

(b) Has not transacted insurance as defined in ORS 731.146 for a period of 60 consecutive days;

and

(c) Would qualify as a full-time loan originator if not exempted under ORS 59.840 (4).

(2) An individual who is an insurance agent or insurance consultant licensed under ORS 744.002 and who is employed full-time as a loan originator shall:

[(a) Complete an entry-level training course approved or provided by an organization certified as described in ORS 59.977;]

[(b) Pass an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state;]

[(c) If the individual has been employed as a loan originator for two or more years in this state, complete the continuing education requirements under ORS 59.975; and]

(a) Be certified under section 3 of this 2005 Act; and

[(d)] **(b)** Undergo a criminal records check as required in ORS 59.972.

SECTION 9. ORS 59.972 is amended to read:

59.972. (1) A mortgage banker or mortgage broker shall conduct a criminal records check, **including fingerprint identification**, of each individual who the mortgage banker or mortgage broker employs or intends to employ as a loan originator.

(2) A mortgage banker or mortgage broker shall report to the Director of the Department of Consumer and Business Services the results of each criminal records check conducted under subsection (1) of this section.

(3) The director shall adopt rules:

(a) Necessary for the implementation and administration of criminal records checks required under this section and ORS 59.970; and

(b) Specifying categories of criminal convictions that will prevent a person from acting as a loan originator under ORS 59.971.

SECTION 10. ORS 59.840 is amended to read:

59.840. As used in ORS 59.840 to 59.980:

(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 59.980.

(4)(a) “Loan originator” means an individual employed by or purporting to act **on behalf of or** as an agent *[or independent contractor]* for a mortgage banker or mortgage broker that is required to be licensed under ORS 59.840 to 59.980, 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

1 mortgage loan borrower, and having primary job responsibilities that include negotiating with a
 2 borrower or potential borrower for the purpose of establishing the terms and conditions of a mort-
 3 gage loan.

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

8 (c) "Loan originator" does not include an individual whose responsibilities are clerical or ad-
 9 ministrative functions, including but not limited to gathering information, requesting information,
 10 word processing, soliciting general interest in mortgage loans, sending correspondence and assem-
 11 bling files.

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

19 (e) "Loan originator" does not include an insurance producer licensed under ORS 744.052 to
 20 744.089 or insurance consultant licensed under ORS 744.002.

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

23 **(g) "Loan originator" does not include a person qualified as an independent contractor**
 24 **under ORS 670.600 who contracts with a mortgage banker or mortgage broker that is re-**
 25 **quired to be licensed under ORS 59.840 to 59.980.**

26 (5) "Mortgage banker":

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

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

30 (B) Services or sells a mortgage banking loan.

31 (b) Does not include:

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

33 (B) A financial holding company or a bank holding company, as defined in ORS 706.008, holding
 34 an institution described in subparagraph (A) of this paragraph; a savings and loan holding company
 35 as defined in section 408 of the National Housing Act, 12 U.S.C. 1730a (1982), holding an association
 36 described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the financial
 37 holding company, bank holding company or savings and loan holding company; or subsidiaries and
 38 affiliates of institutions described in subparagraph (A) of this paragraph, provided that the appro-
 39 priate statutory regulatory authority is exercising control over or is regulating or supervising the
 40 persons listed in this subparagraph in their mortgage banking activities in accordance with the
 41 purposes of ORS 59.840 to 59.980.

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

45 (D) An attorney licensed in this state who negotiates mortgage banking loans or mortgage loans

1 in the ordinary course of business, unless the business of negotiating mortgage banking loans or
 2 mortgage loans constitutes substantially all of the attorney's professional activity.

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

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

6 (G) A person who receives a mortgage or deed of trust on real property as security for an ob-
 7 ligation payable on an installment or deferred payment basis and arising out of materials furnished
 8 or services rendered in the improvement of that real property or any lien created without the con-
 9 sent of the owner of the real property.

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

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

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

22 (K) A retirement or pension fund.

23 (L) An insurer as defined in ORS 731.106.

24 (M) A court appointed fiduciary.

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

26 (6) "Mortgage banking loan" means a loan, extension of credit or a retail sales contract that is
 27 funded exclusively from the mortgage banker's own resources, which is directly or indirectly secured
 28 by a mortgage or deed of trust or any lien interest on real estate and which is created with the
 29 consent of the owner of the real property. For purposes of this subsection, "own resources" means
 30 any of the following:

31 (a) Cash, corporate capital, warehouse credit lines at financial institutions defined in ORS
 32 706.008 or other sources that are liability items of the mortgage banker's financial statements for
 33 which its assets are pledged;

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

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

42 (7) "Mortgage broker":

43 (a) Means a person who:

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

1 than persons enumerated in ORS 59.035 (4);

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

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

7 (b) Does not include:

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

9 (B) A financial holding company or a bank holding company, as defined in ORS 706.008, holding
 10 an institution described in subparagraph (A) of this paragraph; a savings and loan holding company
 11 as defined in section 408 of the National Housing Act, 12 U.S.C. 1730a (1982), holding an association
 12 described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the financial
 13 holding company, bank holding company or savings and loan holding company; or subsidiaries and
 14 affiliates of institutions described in subparagraph (A) of this paragraph, provided that the appro-
 15 priate statutory regulatory authority is exercising control over or is regulating or supervising the
 16 persons listed in this subparagraph in their mortgage brokering activities in accordance with the
 17 purposes of ORS 59.840 to 59.980.

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

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

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

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

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

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

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

34 (J) A person who receives a mortgage or deed of trust on real property as security for an obli-
 35 gation payable on an installment or deferred payment basis and arising out of materials furnished
 36 or services rendered in the improvement of that real property or any lien created without the con-
 37 sent of the owner of the real property.

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

45 (L) A nonprofit federally tax exempt corporation certified by the United States Small Business

1 Administration and organized to promote economic development within this state whose primary
 2 activity consists of providing financing for business expansion.

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

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

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

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

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

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

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

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

25 **SECTION 11.** ORS 59.840, as amended by section 48, chapter 655, Oregon Laws 2003, is
 26 amended to read:

27 59.840. As used in ORS 59.840 to 59.980:

28 (1) "Director" means the Director of the Department of Consumer and Business Services.

29 (2) "Fraud," "deceit" and "defraud" are not limited to common-law deceit.

30 (3) "License" means a license issued to a mortgage banker or mortgage broker under ORS 59.840
 31 to 59.980.

32 (4)(a) "Loan originator" means an individual employed by or purporting to act **on behalf of or**
 33 as an agent [*or independent contractor*] for a mortgage banker or mortgage broker that is required
 34 to be licensed under ORS 59.840 to 59.980, with the expectation by the individual of compensation
 35 or gain that is determined by the amount borrowed or the terms and conditions agreed to by the
 36 mortgage loan borrower, and having primary job responsibilities that include negotiating with a
 37 borrower or potential borrower for the purpose of establishing the terms and conditions of a mort-
 38 gage loan.

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

43 (c) "Loan originator" does not include an individual whose responsibilities are clerical or ad-
 44 ministrative functions, including but not limited to gathering information, requesting information,
 45 word processing, soliciting general interest in mortgage loans, sending correspondence and assem-

1 bling files.

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

9 (e) "Loan originator" does not include an insurance producer licensed under ORS 744.052 to
 10 744.089 or insurance consultant licensed under ORS 744.002.

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

13 **(g) "Loan originator" does not include a person qualified as an independent contractor**
 14 **under ORS 670.600 who contracts with a mortgage banker or mortgage broker that is re-**
 15 **quired to be licensed under ORS 59.840 to 59.980.**

16 (5) "Mortgage banker":

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

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

20 (B) Services or sells a mortgage banking loan.

21 (b) Does not include:

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

23 (B) A financial holding company or a bank holding company, as defined in ORS 706.008, holding
 24 an institution described in subparagraph (A) of this paragraph; a savings and loan holding company
 25 as defined in section 408 of the National Housing Act, 12 U.S.C. 1730a (1982), holding an association
 26 described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the financial
 27 holding company, bank holding company or savings and loan holding company; or subsidiaries and
 28 affiliates of institutions described in subparagraph (A) of this paragraph, provided that the appro-
 29 priate statutory regulatory authority is exercising control over or is regulating or supervising the
 30 persons listed in this subparagraph in their mortgage banking activities in accordance with the
 31 purposes of ORS 59.840 to 59.980.

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

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

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

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

41 (G) A person who receives a mortgage or deed of trust on real property as security for an ob-
 42 ligation payable on an installment or deferred payment basis and arising out of materials furnished
 43 or services rendered in the improvement of that real property or any lien created without the con-
 44 sent of the owner of the real property.

45 (H) A person who funds a mortgage banking loan or mortgage loan which has been originated

1 and processed by a licensee or by an exempt person and who does not maintain a place of business
 2 in this state in connection with funding mortgage banking loans or mortgage loans, does not directly
 3 or indirectly solicit borrowers in this state for the purpose of making mortgage banking loans or
 4 mortgage loans and does not participate in the negotiation of mortgage banking loans or mortgage
 5 loans. For the purpose of this subparagraph, “negotiation of mortgage banking loans or mortgage
 6 loans” does not include setting the terms under which a person may buy or fund a mortgage banking
 7 loan or a mortgage loan originated by a licensee or exempt person.

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

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

12 (K) A retirement or pension fund.

13 (L) An insurer as defined in ORS 731.106.

14 (M) A court appointed fiduciary.

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

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

21 (a) Cash, corporate capital, warehouse credit lines at financial institutions defined in ORS
 22 706.008 or other sources that are liability items of the mortgage banker’s financial statements for
 23 which its assets are pledged;

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

27 (c) The mortgage banker’s affiliates’ cash, corporate capital, warehouse credit lines at financial
 28 institutions defined in ORS 706.008 or other sources that are liability items on the affiliates’ finan-
 29 cial statements for which the affiliates’ assets are pledged. As used in this paragraph, “affiliates”
 30 means entities that, directly or indirectly, through one or more intermediaries controls, are con-
 31 trolled by or are under common control with the entity specified.

32 (7) “Mortgage broker”:

33 (a) Means a person who:

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

37 (B) Engages all or part of the time, for the account of others or for the person’s own account,
 38 in the business of accepting funds from one or more persons other than persons enumerated in ORS
 39 59.035 (4) for investment in real estate paper; or

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

42 (b) Does not include:

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

44 (B) A financial holding company or a bank holding company, as defined in ORS 706.008, holding
 45 an institution described in subparagraph (A) of this paragraph; a savings and loan holding company

1 as defined in section 408 of the National Housing Act, 12 U.S.C. 1730a (1982), holding an association
2 described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the financial
3 holding company, bank holding company or savings and loan holding company; or subsidiaries and
4 affiliates of institutions described in subparagraph (A) of this paragraph, provided that the appro-
5 priate statutory regulatory authority is exercising control over or is regulating or supervising the
6 persons listed in this subparagraph in their mortgage brokering activities in accordance with the
7 purposes of ORS 59.840 to 59.980.

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

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

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

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

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

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

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

24 (J) A person who receives a mortgage or deed of trust on real property as security for an obli-
25 gation payable on an installment or deferred payment basis and arising out of materials furnished
26 or services rendered in the improvement of that real property or any lien created without the con-
27 sent of the owner of the real property.

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

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

38 (M) A person licensed under ORS 446.691 or 446.696 or a temporary manufactured structure
39 dealer licensee under ORS 446.701 who provides services customarily associated with the retail sales
40 of manufactured dwellings, including communication of generally available information regarding
41 mortgage loans, unless:

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

44 (ii) For the benefit of a potential purchaser, the person completes a loan application form or
45 other document that is part of a mortgage banking loan and completes a good faith estimate under

1 the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.);

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

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

6 (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
8 mortgage banking loan, secured by a mortgage or deed of trust or any lien interest on real estate
9 that is created with the consent of the owner of the real estate.

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

16 **SECTION 12.** ORS 59.880 is amended to read:

17 59.880. (1) The Director of the Department of Consumer and Business Services shall have gen-
18 eral supervision and control over all loan originators, mortgage bankers and mortgage brokers re-
19 siding or doing business in this state and engaged in any activity subject to the provisions of ORS
20 59.840 to 59.980. *[All such persons and their records and everything connected with their activities*
21 *shall be subject to examination by the director at any time. The provisions of this section and of any*
22 *other section of ORS 59.840 to 59.980 relating to examinations shall extend to any person]*

23 **(2) The director shall conduct regular and periodic examinations of all persons described**
24 **in subsection (1) of this section. The Department of Consumer and Business Services shall**
25 **determine by rule the schedule and procedures for conducting the examinations.**

26 **(3) The director may examine the records and everything connected with the activities**
27 **of any person:**

28 (a) Who should have been **certified as a loan originator under section 3 of this 2005 Act**,
29 reported as a loan originator under ORS 59.969 or licensed as a mortgage banker or mortgage
30 broker[, *any person*];

31 **(b) Who is exempted by rule from [those] the definitions of loan originator, mortgage banker**
32 **or mortgage broker; or [any person]**

33 (c) Whose license **or certificate** has expired or has been withdrawn, canceled, suspended, con-
34 ditioned or revoked.

35 (4) The director may collect from each [*such*] person **whose records or activities are exam-**
36 **ined under this section** the actual expenses incurred in [*that*] **the** examination.

37 **SECTION 13.** ORS 59.865 is amended to read:

38 59.865. Except as provided in ORS 59.870, the Director of the Department of Consumer and
39 Business Services may by order deny, suspend, condition or revoke a license of a person as a
40 mortgage banker or mortgage broker if the director finds that the applicant or licensee:

41 (1) Is insolvent, either in the sense that the liabilities of the applicant or licensee exceed the
42 assets of the applicant or licensee or that the applicant or licensee cannot meet the obligations of
43 the applicant or licensee as the obligations mature, or is in such financial condition that the appli-
44 cant or licensee cannot continue in business with safety to the customers of the applicant or
45 licensee.

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

3 (3) Has willfully or repeatedly violated or failed to comply with any provision of ORS 59.840 to
 4 59.980 or any rule or order of the director.

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

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

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

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

14 (8) Is the subject of an order of the director denying, suspending, conditioning or revoking a li-
 15 cense as a mortgage banker or mortgage broker.

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

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

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

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

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

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

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

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

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

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

36 **SECTION 14. (1) Except as provided in subsection (2) of this section, sections 2 to 6 of**
 37 **this 2005 Act and the amendments to ORS 59.840, 59.969 and 59.970 by sections 7, 8, 10 and**
 38 **11 of this 2005 Act apply to persons who engage in residential mortgage transactions in this**
 39 **state as a loan originator on or after January 1, 2006.**

40 **(2) For persons who are employed as a loan originators in this state on January 1, 2006,**
 41 **the Director of the Department of Consumer and Business Services shall specify by rule the**
 42 **date by which the persons must comply with the requirements of sections 2 to 6 of this 2005**
 43 **Act and the amendments to ORS 59.840, 59.969 and 59.970 by sections 7, 8, 10 and 11 of this**
 44 **2005 Act.**

45 **(3) The amendments to ORS 59.972 by section 9 of this 2005 Act apply only to criminal**

1 records checks conducted on or after January 1, 2006.

2 (4) The amendments to ORS 59.880 by section 12 of this 2005 Act apply to examinations
3 conducted on or after January 1, 2006.

4 **SECTION 15.** (1) Sections 1 to 6 of this 2005 Act and the amendments to ORS 59.840,
5 59.865, 59.880, 59.969, 59.970 and 59.972 by sections 7 to 13 of this 2005 Act become operative
6 January 1, 2006.

7 (2) The Director of the Department of Consumer and Business Services may take any
8 action before the operative date specified in this section that is necessary to enable the di-
9 rector to exercise, on and after the operative date specified in this section, all the duties,
10 functions and powers conferred upon the director by sections 1 to 6 of this 2005 Act and the
11 amendments to ORS 59.840, 59.865, 59.880, 59.969, 59.970 and 59.972 by sections 7 to 13 of this
12 2005 Act.

13 **SECTION 16.** This 2005 Act being necessary for the immediate preservation of the public
14 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect
15 on its passage.

16 _____