

# House Bill 3029

Sponsored by Representative BRUUN (at the request of Bill Ridge, Larry Barrett)

## 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**.

Adds independent contractor to definition of "loan originator" and specifies conditions under which mortgage banker or mortgage broker may treat individual as independent contractor for purposes of regulating mortgage loan transactions. Provides for denial, suspension, conditioning or revocation of mortgage banker's or mortgage broker's license for failure to comply with certain federal laws and regulations or for employing or contracting with loan originators who do not meet educational requirements. Permits Director of Department of Consumer and Business Services to require compliance with other federal laws and regulations.

Allows individual loan originator to elect treatment as employee or independent contractor and requires mortgage banker and mortgage broker to provide list with election for each loan originator to director.

Provides that mortgage broker or mortgage banker is not employer of loan originator providing services related to mortgage loan or residential mortgage transaction as independent contractor. Prohibits loan originator electing to provide services as independent contractor from receiving workers' compensation benefits under most circumstances.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to regulation of mortgage lending; creating new provisions; amending ORS 59.840, 59.865,  
3 59.905, 59.945, 59.962, 59.967, 59.969, 59.970, 59.971, 59.972, 59.973, 59.975, 656.037 and 657.085;  
4 and declaring an emergency.

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

6 **SECTION 1.** ORS 59.840 is amended to read:

7 59.840. As used in ORS 59.840 to 59.980:

8 *[(1) "Director" means the Director of the Department of Consumer and Business Services.]*

9 **(1) "Employee" means an individual who performs services as a loan originator for a**  
10 **mortgage banker or mortgage broker that agrees to pay the individual a salary or wages at**  
11 **a fixed rate and:**

12 **(a) The individual has filed or must file a federal withholding form W-4 under the Internal**  
13 **Revenue Code with respect to the individual's compensation for loan origination services**  
14 **provided to the banker or broker;**

15 **(b) The banker or broker withholds taxes from the individual's compensation and does**  
16 **not treat the individual as an independent contractor; and**

17 **(c) The individual has no financial or ownership interest in the banker or broker's busi-**  
18 **ness other than receiving a salary or wages.**

19 **(2) "Fraud," "deceit" and "defraud" include but are not limited to common-law deceit.**

20 **(3) "Independent contractor" means an individual who provides loan origination services**  
21 **to a mortgage banker or mortgage broker through an agreement or contractual relationship**  
22 **and:**

23 **(a) The means by or manner in which the individual provides loan origination services is**  
24 **not subject to the banker's or broker's direction or control;**

**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       **(b) The banker or broker does not withhold taxes from the individual’s compensation and**  
 2       **otherwise treats the individual as an independent contractor; and**

3       **(c) The individual has not filed or need not file a federal withholding form W-4 under the**  
 4       **Internal Revenue Code with respect to the individual’s compensation for loan origination**  
 5       **services provided to the banker or broker.**

6       [(3)] (4) “License” means a license issued to a mortgage banker or mortgage broker under ORS  
 7 59.840 to 59.980.

8       **(5) “Loan origination services” means work that a loan originator performs in connection**  
 9       **with a mortgage loan or residential mortgage transaction.**

10       [(4)(a)] (6)(a) “Loan originator” means an individual employed by [*or purporting to act as an*  
 11 *agent or independent contractor for*] a mortgage banker or mortgage broker that is required to be  
 12 licensed under ORS 59.840 to 59.980, **or an individual who provides loan origination services to**  
 13 **the banker or broker as an independent contractor**, with the expectation by the individual of  
 14 compensation or gain that is determined by the amount borrowed or the terms and conditions agreed  
 15 to by the mortgage loan borrower, and having [*primary job*] responsibilities that include negotiating  
 16 with a borrower or potential borrower for the purpose of establishing the terms and conditions of  
 17 a mortgage loan.

18       (b) “Loan originator” includes a person employed **as a loan originator or who provides loan**  
 19 **origination services as an independent contractor** at a location outside this state whose primary  
 20 job responsibilities include contacting or attempting to contact a borrower or potential borrower  
 21 within this state through any medium or mode of communication for purposes of providing a mort-  
 22 gage loan within this state.

23       (c) “Loan originator” does not include an individual whose responsibilities are clerical or ad-  
 24 ministrative functions, including but not limited to gathering information, requesting information,  
 25 word processing, soliciting general interest in mortgage loans, sending correspondence and assem-  
 26 bling files.

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

34       (e) “Loan originator” does not include an insurance producer licensed under ORS 744.052 to  
 35 744.089 or insurance consultant licensed under ORS 744.002.

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

38       [(5)] (7) “Mortgage banker”:

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

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

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

43       (b) Does not include:

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

45       (B) A financial holding company or a bank holding company, as defined in ORS 706.008, holding

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

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

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

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

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

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

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

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

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

34 (K) A retirement or pension fund.

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

36 (M) A court appointed fiduciary.

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

38 [(6)] (8) "Mortgage banking loan" means a loan, extension of credit or a retail sales contract  
39 that is funded exclusively from the mortgage banker's own resources, which is directly or indirectly  
40 secured by a mortgage or deed of trust or any lien interest on real estate and which is created with  
41 the consent of the owner of the real property. For purposes of this subsection, "own resources"  
42 means any of the following:

43 (a) Cash, corporate capital, warehouse credit lines at financial institutions defined in ORS  
44 706.008 or other sources that are liability items of the mortgage banker's financial statements for  
45 which its assets are pledged;

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

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

9 [(7)] (9) "Mortgage broker":

10 (a) Means a person who:

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

14 (B) Engages all or part of the time, for the account of others or for the person's own account,  
 15 in the business of accepting funds from one or more persons other than persons enumerated in ORS  
 16 59.035 (4) for investment in real estate paper; or

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

19 (b) Does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 [(8)] (10) “Mortgage loan” means a loan, extension of credit or retail sales contract, other than  
 30 a mortgage banking loan, secured by a mortgage or deed of trust or any lien interest on real estate  
 31 that is created with the consent of the owner of the real estate.

32 [(9)] (11) “Residential mortgage transaction” means a transaction in which a mortgage, deed of  
 33 trust, purchase money security interest arising under an installment sales contract, or equivalent  
 34 consensual security interest is created or retained in property upon which four or fewer residential  
 35 dwelling units are planned or situated, including but not limited to individual units or condominiums  
 36 and cooperatives. As used in this subsection, “residential dwelling unit” means an improvement de-  
 37 signed for residential occupancy.

38 **SECTION 2.** ORS 59.865 is amended to read:

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

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

1 licensee.

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

4 (3) Has willfully or repeatedly violated or failed to comply with any provision of ORS 59.840 to  
 5 59.980 or any rule or order of the director.

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

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

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

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

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

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

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

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

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

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

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

29 *[(15) Has failed to supervise diligently and control the mortgage-related activities of a loan origi-  
 30 nator employed by the licensee.]*

31 **(15) Has, in advertising a residential mortgage loan, conducting business as a mortgage  
 32 banker or mortgage broker or, when applicable, providing loan origination services, failed to  
 33 comply with a requirement of:**

34 **(a) The Truth in Lending Act, 15 U.S.C. 1601, and Regulation Z, 12 C.F.R. part 226, as  
 35 enacted or promulgated on the effective date of this 2007 Act;**

36 **(b) The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq., and Regulation  
 37 X, 24 C.F.R. part 3500, as enacted or promulgated on the effective date of this 2007 Act;**

38 **(c) The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq., and Regulation B, 12 C.F.R.  
 39 202.9, 202.11 and 202.12, as enacted or promulgated on the effective date of this 2007 Act;**

40 **(d) Title V, Subtitle A of the Gramm-Leach-Bliley Act (P.L. 106-102) and rules  
 41 promulgated in accordance with Title V, Subtitle A of the Gramm-Leach-Bliley Act, including  
 42 16 C.F.R. parts 313 and 314, as enacted or promulgated on the effective date of this 2007 Act;**

43 **(e) The Home Mortgage Disclosure Act, 12 U.S.C. 2801 et seq., and Regulation C, 12 C.F.R.  
 44 part 203, as enacted or promulgated on the effective date of this 2007 Act;**

45 **(f) The Federal Trade Commission Act, 15 U.S.C. 41 et seq., as enacted on the effective**

1 **date of this 2007 Act; or**

2 **(g) The Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101 to**  
 3 **6108, and the Telemarketing Sales Rule, 16 C.F.R. part 310, as enacted or promulgated on the**  
 4 **effective date of this 2007 Act.**

5 (16) Has knowingly misrepresented to the director the *[training of, examination of or continuing*  
 6 *education time earned by a loan originator employed by the licensee]* **extent of a loan originator’s**  
 7 **training, education or continuing education.**

8 (17) Has willfully or repeatedly employed *[persons as]* loan originators **or repeatedly con-**  
 9 **tracted for loan origination services with independent contractors** who do not meet the train-  
 10 ing, education or continuing education requirements for loan originators.

11 **(18) Has, in advertising a residential mortgage loan, conducting business as a mortgage**  
 12 **banker or mortgage broker or, when applicable, providing loan origination services:**

13 **(a) Directed or instructed an employee or an independent contractor in conduct that vi-**  
 14 **olates ORS 59.840 to 59.980;**

15 **(b) Allowed or approved conduct that violates ORS 59.840 to 59.980 with knowledge of the**  
 16 **conduct; or**

17 **(c) Failed to take reasonable remedial action to avoid or mitigate conduct that violates**  
 18 **ORS 59.840 to 59.980 at a time when circumstances allowed for avoidance or mitigation and**  
 19 **the banker or broker knew, or by exercise of reasonable care and inquiry should have known,**  
 20 **of the conduct.**

21 *[(18)]* **(19) Has failed to notify the director of the termination of a loan originator for failure to**  
 22 **comply with state or federal laws, regulations or rules.**

23 **SECTION 3. The Department of Consumer and Business Services by rule may require**  
 24 **mortgage bankers, mortgage brokers and loan originators subject to ORS 59.840 to 59.980**  
 25 **who advertise residential mortgage loans or conduct business as a mortgage banker, mort-**  
 26 **gage broker or loan originator to comply with federal statutes and regulations other than**  
 27 **the statutes and regulations set forth in ORS 59.865 (15) and 59.971 (1)(e).**

28 **SECTION 4.** ORS 59.905 is amended to read:

29 59.905. (1) Except as provided in ORS 183.745, upon the entry of an order under ORS 59.840 to  
 30 59.980, the Director of the Department of Consumer and Business Services shall promptly give ap-  
 31 propriate notice of the order as provided in this subsection. The notice shall state that a hearing  
 32 will be held on the order if a written demand for hearing is filed with the director within 20 days  
 33 after the date of service of the order. The notice shall be given to:

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

35 (b) The loan originator and the licensee employing the loan originator **or for whom the loan**  
 36 **originator provides loan origination services,** with respect to orders entered pursuant to ORS  
 37 59.973; or

38 (c) All interested persons with respect to orders entered pursuant to any other provision of ORS  
 39 59.840 to 59.980.

40 (2) If timely demand for a hearing is filed by a person entitled to notice of the order, the director  
 41 shall hold a hearing on the order as provided by ORS chapter 183. In the absence of a timely demand  
 42 for a hearing, a person is not entitled to judicial review of the order.

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

45 (4) The director may enter a final order revoking a license notwithstanding the fact that the

1 license has expired, if the initial order of revocation was issued prior to expiration of the license  
 2 or registration.

3 **SECTION 5.** ORS 59.945 is amended to read:

4 59.945. A mortgage banker, [or] mortgage broker **or loan originator** shall not use or cause to  
 5 be published any advertisement that:

6 (1) Contains any false, misleading or deceptive statement or representation; or

7 (2) Identifies the mortgage banker, [or] mortgage broker **or loan originator** by any name other  
 8 than the name listed on the license issued **to the banker or broker** by the Director of the De-  
 9 partment of Consumer and Business Services, **the name of the loan originator that the banker**  
 10 **or broker provided to, or that is on file with, the director** or an assumed business name regis-  
 11 tered under ORS chapter 648.

12 **SECTION 6.** ORS 59.962 is amended to read:

13 59.962. (1) With the permission of the lender, note owner, note holder or other holder of an in-  
 14 terest in a note, a mortgage banker or mortgage broker may service or collect any mortgage bank-  
 15 ing loan or mortgage loan in [its] **the banker's or broker's** own name or the name of the lender,  
 16 note owner, note holder or other holder of an interest in the note.

17 (2) Except as provided in ORS 59.840 to 59.980, [nothing in] subsection (1) of this section [is in-  
 18 tended to] **does not** grant the Director of the Department of Consumer and Business Services the  
 19 authority to regulate the servicing or collection of any mortgage banking loan or mortgage loan by  
 20 a mortgage banker or mortgage broker.

21 (3) As used in this section:

22 (a) "Mortgage banker" has the meaning given that term in ORS 59.840 [(5)(a)] **(7)(a)** but also  
 23 includes those persons exempted from the definition of mortgage banker in ORS 59.840 [(5)(b)]  
 24 **(7)(b)**.

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

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

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

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

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

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

39 (C) Bringing and maintaining any suit or action to collect any amounts owed on a mortgage  
 40 banking loan or mortgage loan, including but not limited to the exercise of any contractual, statu-  
 41 tory or common law remedies such as injunction, specific performance, judicial or nonjudicial fore-  
 42 closure or receivership.

43 **SECTION 7.** ORS 59.967 is amended to read:

44 59.967. (1) The Legislative Assembly finds and declares that:

45 (a) The public interest is served by identifying a loan originator with a specific mortgage banker



1 or mortgage broker; and

2 (b) The public must be protected from the conflicts of interest created when a loan originator  
 3 is employed by **or, as an independent contractor, provides loan origination services for** more  
 4 than one mortgage lender.

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

7 **(3) Nothing in ORS 59.840 to 59.980 prevents loan originators from operating as sole**  
 8 **proprietorships, partnerships, limited liability companies or corporations.**

9 **SECTION 8.** ORS 59.969 is amended to read:

10 59.969. (1) A mortgage banker or mortgage broker must provide to the Director of the Depart-  
 11 ment of Consumer and Business Services, and keep current, a list of loan originators [*employed by*]  
 12 **that the banker or broker employs or that provide loan origination services to the banker or**  
 13 **broker as independent contractors. The banker or broker shall indicate on the list with re-**  
 14 **spect to each loan originator whether the banker or broker employs the loan originator or**  
 15 **whether the loan originator provides loan origination services for the banker or broker as**  
 16 **an independent contractor. For purposes of this section, the banker or broker may rely on**  
 17 **the agreement the loan originator executes under ORS 59.971 (1)(f). The banker or broker shall**  
 18 **notify the director within 30 days after the banker or broker initiates or terminates the loan**  
 19 **originator's employment or within 30 days after the banker or broker enters into or termi-**  
 20 **nates a contract with an independent contractor for loan origination services, as appropriate.**  
 21 [*of the employment or termination of employment of a loan originator.*]

22 (2) An applicant for issuance of a mortgage banker or mortgage broker license under ORS 59.850  
 23 shall include with the application evidence acceptable to the director that each individual the ap-  
 24 plicant has hired or intends to hire as a loan originator **or each independent contractor with**  
 25 **whom the applicant has contracted or intends to contract for loan origination services** has:

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

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

30 (b) If the individual has been employed as a loan originator **or has provided loan origination**  
 31 **services as an independent contractor** for two or more years in this state, completed continuing  
 32 education as required by the director pursuant to ORS 59.975.

33 (3) A mortgage banker or mortgage broker that applies for renewal of a license pursuant to ORS  
 34 59.855 shall include with the application evidence acceptable to the director that each individual  
 35 employed by the banker or broker as a loan originator **or each independent contractor with**  
 36 **whom the banker or broker has contracted for loan origination services** has:

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

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

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

44 (4) An applicant for issuance of a mortgage banker or mortgage broker license under ORS 59.850  
 45 shall include with the application evidence acceptable to the director that each individual the ap-

1 plicant has hired or intends to hire who is an insurance producer or insurance consultant licensed  
 2 under ORS 744.002 and who is a full-time loan originator as defined in ORS 59.970 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 full-time loan originator for two or more years in  
 8 this state, completed continuing education as required by the director pursuant to ORS 59.975.

9 (5) A mortgage banker or mortgage broker that applies for renewal of a license pursuant to ORS  
 10 59.855 shall include with the application evidence acceptable to the director that each individual  
 11 employed by the mortgage banker or mortgage broker as a loan originator who is an insurance  
 12 producer or insurance consultant licensed under ORS 744.002 and who is a full-time loan originator  
 13 as defined in ORS 59.970 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  
 19 this state, completed continuing education as required by the director pursuant to ORS 59.975.

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

23 (a) Certify that, to the best of the applicant's belief, no individual the applicant employs or in-  
 24 tends to employ as a loan originator **and no independent contractor with whom the applicant**  
 25 **has contracted or intends to contract for loan origination services** has engaged in conduct that  
 26 would constitute a violation of ORS 59.967 (2) or 59.971; or

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

29 (7) Except as provided in subsections (4) and (5) of this section, a mortgage banker or mortgage  
 30 broker may voluntarily report to the director regarding employees **or independent contractors**  
 31 who would qualify as loan originators if not exempted under ORS 59.840 [(4)] (6). Voluntary report-  
 32 ing by a banker or broker under this subsection does not make the reported employees **or inde-**  
 33 **pendent contractors** subject to training, examination or continuing education requirements or  
 34 other laws governing loan originators.

35 (8) The director shall keep records that include notifications filed under subsection (1) of this  
 36 section and exceptions to certifications under subsection (6) of this section. The director shall re-  
 37 tain the records for a period of not less than three years. The director shall keep for 10 years a  
 38 record of any complaint against a loan originator that has been determined to be justified pursuant  
 39 to ORS 59.973.

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

44 **SECTION 9.** ORS 59.970 is amended to read:

45 59.970. (1) As used in this section, "loan originator" means an individual who:

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

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

3 and

4 (c) Would qualify as a full-time loan originator if not exempted under ORS 59.840 [(4)] (6).

5 (2) An individual who is an insurance producer or insurance consultant licensed under ORS  
6 744.002 and who is employed full-time as a loan originator shall:

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

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

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

13 (d) Undergo a criminal records check as required in ORS 59.972.

14 **SECTION 10.** ORS 59.971 is amended to read:

15 59.971. (1) A person employed by a mortgage banker or mortgage broker as a loan originator  
16 **or an independent contractor who provides loan origination services to a banker or broker**  
17 may not:

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

20 (b) Willfully or repeatedly violate or fail to comply with a provision of ORS 59.840 to 59.980 or  
21 a rule or order of the Director of the Department of Consumer and Business Services.

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

24 (d) Fail to meet the training, education or continuing education requirements for loan origina-  
25 tors.

26 (e) **Fail, in advertising a residential mortgage loan or providing loan origination services,**  
27 **to comply with a requirement of:**

28 (A) **The Truth in Lending Act, 15 U.S.C. 1601, and Regulation Z, 12 C.F.R. part 226, as**  
29 **enacted or promulgated on the effective date of this 2007 Act;**

30 (B) **The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq., and Regulation**  
31 **X, 24 C.F.R. part 3500, as enacted or promulgated on the effective date of this 2007 Act;**

32 (C) **The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq., and Regulation B, 12 C.F.R.**  
33 **202.9, 202.11 and 202.12, as enacted or promulgated on the effective date of this 2007 Act;**

34 (D) **Title V, Subtitle A of the Gramm-Leach-Bliley Act (P.L. 106-102) and rules**  
35 **promulgated in accordance with Title V, Subtitle A of the Gramm-Leach-Bliley Act, including**  
36 **16 C.F.R. parts 313 and 314, as enacted or promulgated on the effective date of this 2007 Act;**

37 (E) **The Home Mortgage Disclosure Act, 12 U.S.C. 2801 et seq., and Regulation C, 12**  
38 **C.F.R. part 203, as enacted or promulgated on the effective date of this 2007 Act;**

39 (F) **The Federal Trade Commission Act, 15 U.S.C. 41 et seq., as enacted on the effective**  
40 **date of this 2007 Act; or**

41 (G) **The Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101**  
42 **to 6108, and the Telemarketing Sales Rule, 16 C.F.R. part 310, as enacted or promulgated on**  
43 **the effective date of this 2007 Act.**

44 (f) **Fail to provide to the broker or banker an executed agreement that indicates whether**  
45 **the person has elected to work as an independent contractor or as an employee of the banker**

1 **or broker.**

2 **(g) Knowingly misrepresent to the director the extent of the person’s training, education**  
 3 **or continuing education.**

4 (2) A person may not be employed by a mortgage banker or mortgage broker as a loan origina-  
 5 tor as defined in ORS 59.840 or 59.970 **or, as an independent contractor, provide loan origination**  
 6 **services to a banker or broker** if the person has been convicted of any crime or category of crime  
 7 specified by the director by rule.

8 **SECTION 11.** ORS 59.972 is amended to read:

9 59.972. (1) A mortgage banker or mortgage broker shall conduct a criminal records check of  
 10 each individual who the mortgage banker or mortgage broker employs or intends to employ as a  
 11 loan originator **and each independent contractor with whom the banker or broker contracts**  
 12 **or intends to contract for loan origination services.**

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

16 (3) The director shall adopt rules:

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

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

21 **SECTION 12.** ORS 59.973 is amended to read:

22 59.973. (1) If the Director of the Department of Consumer and Business Services receives a  
 23 complaint against a loan originator for a violation of ORS 59.967 (2) or 59.971, the director may  
 24 notify the loan originator and the mortgage banker or mortgage broker [*employing*] **that employs**  
 25 **the loan originator or for which the loan originator provides loan origination services as an**  
 26 **independent contractor.**

27 (2) The director may investigate a complaint against a loan originator. Upon the conclusion of  
 28 the investigation, the director shall promptly notify the loan originator and the mortgage banker or  
 29 mortgage broker [*employing*] **that employs** the loan originator, **or the banker or broker for which**  
 30 **the loan originator provides loan origination services as an independent contractor,** of the  
 31 director’s proposed determination regarding the complaint.

32 (3) Any hearing on a complaint must be conducted as provided by rules of the director and  
 33 pursuant to ORS chapter 183.

34 (4) If the director determines, after opportunity for hearing, that a complaint is justified, the  
 35 director shall note the complaint in the records kept pursuant to ORS 59.969 (8). For a violation of  
 36 ORS 59.967 (2) or 59.971, the director may impose requirements for supervision and remedial edu-  
 37 cation of the loan originator, assess civil penalties against the loan originator as provided in ORS  
 38 59.996 or refer the matter for criminal prosecution pursuant to ORS 59.992.

39 **SECTION 13.** ORS 59.975 is amended to read:

40 59.975. The Director of the Department of Consumer and Business Services shall, by rule, es-  
 41 tablish continuing education requirements for [*persons employed by mortgage bankers or mortgage*  
 42 *brokers as*] loan originators. The requirements established by the director may not be less than 10  
 43 hours every two years and not more than 20 hours every two years. The continuing education must  
 44 be obtained through continuing education programs approved or provided by an organization whose  
 45 continuing education curriculum and testing is certified by the director as described in ORS 59.977.

1        **SECTION 14.** ORS 656.037 is amended to read:

2        656.037. (1) A person contracting to pay remuneration for professional real estate activity as  
 3 defined in ORS chapter 696 to a qualified real estate broker or qualified principal real estate broker,  
 4 as defined in ORS 316.209, is not an employer of that qualified broker under the Workers' Compens-  
 5 ation Law. A qualified real estate broker or qualified principal real estate broker is not entitled  
 6 to benefits under the Workers' Compensation Law unless such individual has obtained coverage for  
 7 such benefits pursuant to ORS 656.128.

8        **(2) For purposes of the Workers' Compensation Law, a person who contracts to pay**  
 9 **remuneration to a qualified loan originator, as defined in ORS 59.840, is not the loan origi-**  
 10 **nator's employer if the loan originator provides professional services related to mortgage**  
 11 **loans or residential mortgage transactions as an independent contractor in accordance with**  
 12 **ORS 59.840 to 59.980. A loan originator providing services under ORS 59.840 to 59.980 as an**  
 13 **independent contractor is not entitled to benefits under the Workers' Compensation Law**  
 14 **unless the loan originator has obtained coverage for benefits under ORS 656.128.**

15        **SECTION 15.** ORS 657.085 is amended to read:

16        657.085. **As used in this chapter,** "employment" does not include service performed by any  
 17 person as a newspaper advertising salesperson, real estate broker, principal real estate broker, **loan**  
 18 **originator,** insurance producer or securities salesperson or agent to the extent that the person is  
 19 compensated by commission.

20        **SECTION 16. Section 3 of this 2007 Act and the amendments to ORS 59.840, 59.865, 59.905,**  
 21 **59.945, 59.962, 59.967, 59.969, 59.970, 59.971, 59.972, 59.973, 59.975, 656.037 and 657.085 by sections**  
 22 **1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of this 2007 Act apply to mortgage bankers,**  
 23 **mortgage brokers and loan originators operating on or after the effective date of this 2007**  
 24 **Act, to mortgage loans or residential mortgage transactions that occur on or after the ef-**  
 25 **fective date of this 2007 Act and to administrative or judicial proceedings pending or brought**  
 26 **on or after the effective date of this 2007 Act.**

27        **SECTION 17. This 2007 Act being necessary for the immediate preservation of the public**  
 28 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
 29 **on its passage.**

