

# House Bill 3387

Sponsored by COMMITTEE ON BUSINESS AND LABOR (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 licensed by Department of Consumer and Business Services. Exempts certain persons from licensing requirement. Specifies licensing requirements and certain procedures for issuing and renewing license. Specifies contents of licensing document and requires licensee to keep document at office of employer, except licensee not employed by mortgage banker or mortgage broker. Requires licensee and employer to notify department of change in employment.

Requires licensee to provide certain disclosures, information and documents to borrower.

Requires department to maintain list of licensed loan originators, together with list of complaints and violations against loan originators, and make list available to public.

Modifies definition of "loan originator" to exclude independent contractor.

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

Requires mortgage banker and mortgage broker to have secure place of business in state open to director for inspections during normal business hours.

Requires fingerprint identification and search through national criminal database in criminal background investigations for loan originator.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to mortgage lending; creating new provisions; amending ORS 59.840, 59.850, 59.865, 59.880,  
3 59.950, 59.955, 59.962, 59.969, 59.970, 59.971 and 59.972 and section 7, chapter 526, Oregon Laws  
4 2003; and declaring an emergency.

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

6 **SECTION 1. Sections 2 to 8 of this 2007 Act are added to and made a part of ORS 59.840**  
7 **to 59.980.**

8 **SECTION 2. (1) A person may not conduct business as a loan originator or engage in a**  
9 **residential mortgage transaction in this state unless the person is licensed as a loan origi-**  
10 **nator under section 3 of this 2007 Act.**

11 **(2) This section applies to any act or service a loan originator performs in connection**  
12 **with a mortgage loan, a mortgage banking loan or a residential mortgage transaction that**  
13 **originates in this state, is directed to and received in this state or concerns real estate lo-**  
14 **cated in this state.**

15 **(3) This section does not apply to an employee of a federal credit union or a federal bank,**  
16 **as defined in ORS 706.008, who conducts business as a loan originator or engages in a resi-**  
17 **dential mortgage transaction. An employee who voluntarily obtains a license under section**  
18 **3 of this 2007 Act is subject to the provisions of ORS 59.840 to 59.980.**

19 **SECTION 3. (1) The Director of the Department of Consumer and Business Services by**  
20 **rule shall establish a procedure for licensing loan originators under this section. In estab-**  
21 **lishing the procedure, the director at a minimum shall:**

22 **(a) Prescribe an application form;**

**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) Require a license applicant to grant permission in the application form for a criminal  
 2 background investigation in accordance with ORS 59.972;

3 (c) Require license applicant to identify on the prescribed form the mortgage banker or  
 4 mortgage broker that will employ the applicant as a loan originator; and

5 (d) Specify any other information the director may require on the form.

6 (2) The Department of Consumer and Business Services may issue a license to conduct  
 7 business as a loan originator to an applicant only if the applicant has:

8 (a) Completed 20 hours of entry-level education concerning the laws and rules that gov-  
 9 ern mortgage loans, mortgage banking loans and residential mortgage transactions in this  
 10 state. The department may provide the required education or may permit an organization the  
 11 department has certified under ORS 59.977 to provide the required education.

12 (b) Achieved a passing score on an examination concerning the laws and rules that gov-  
 13 ern mortgage loans, mortgage banking loans and residential mortgage transactions in this  
 14 state. The department may provide the required examination and specify the passing score  
 15 or may permit an organization the department has certified under ORS 59.977 to do so.

16 (3) The department may not issue a new license to or renew a license issued to an ap-  
 17 plicant who did not pass the criminal background investigation conducted in accordance with  
 18 ORS 59.972 or an applicant who violated the provisions of ORS 59.971, whether or not the  
 19 applicant is employed by a mortgage banker or mortgage broker.

20 (4) If an applicant for license renewal has been licensed or employed as a loan originator  
 21 for two or more years in this state, the department may not renew the license unless the  
 22 applicant completes the continuing education requirements described in ORS 59.975.

23 (5) The director shall collect a fee to issue or renew a license under this section. The  
 24 director by rule shall set the amount of the fee and shall ensure that, when aggregated with  
 25 other fees for licenses or license renewals that the director collects under ORS 59.840 to  
 26 59.980, the amount collected from the applicant is sufficient to pay the expenses of adminis-  
 27 tering ORS 59.840 to 59.980.

28 **SECTION 4.** (1) A license document issued under section 3 of this 2007 Act shall bear:

29 (a) The name of the licensed loan originator;

30 (b) A unique identification number associated only with the licensed loan originator in  
 31 Department of Consumer and Business Services records; and

32 (c) The name of the mortgage banker or mortgage broker that employs the licensed loan  
 33 originator.

34 (2) A licensed loan originator shall keep the original license document issued under sec-  
 35 tion 3 of this 2007 Act in the office of the mortgage banker or mortgage broker that employs  
 36 the loan originator and may make copies of the license as necessary to comply with section  
 37 6 of this 2007 Act.

38 (3) The department shall retain in the department's files, with a notation to the effect  
 39 that the licensed loan originator is unattached, the original of any license document the de-  
 40 partment issues to:

41 (a) An employee of a federal credit union or federal bank who, in accordance with section  
 42 2 (3) of this 2007 Act, voluntarily obtains a license under section 3 of this 2007 Act; and

43 (b) An individual who is not employed by a mortgage banker or mortgage broker.

44 (4) A licensed loan originator who terminates employment with a mortgage banker or  
 45 mortgage broker shall:

1 (a) Within three business days, notify the department of the termination; and

2 (b) Within 10 business days, surrender and return to the department the license docu-  
3 ment the department issued to the loan originator.

4 (5) If a licensed loan originator described in subsection (3) or (4) of this section begins  
5 employment with a mortgage banker or mortgage broker licensed under ORS 59.840 to 59.980  
6 before the loan originator's license expires, the loan originator and the employer shall both  
7 notify the department within three business days. The department within 10 business days  
8 after receiving the notice shall provide the loan originator's new employer with an updated  
9 version of the license document that names the new employer. The department shall also  
10 certify to the new employer that the loan originator is approved to conduct business with the  
11 new employer.

12 **SECTION 5.** (1) A license to conduct business as a loan originator expires one year after  
13 the date of issuance unless the Director of the Department of Consumer and Business Ser-  
14 vices establishes a different expiration date.

15 (2) The director by rule shall adopt a procedure subject to the requirements of ORS 59.840  
16 to 59.980 for renewing the license. The rules shall specify the term during which a license  
17 renewed under this section will remain valid.

18 **SECTION 6.** A licensed loan originator shall:

19 (1) Provide to a borrower who uses the loan originator's services in connection with a  
20 mortgage loan, a mortgage banking loan or a residential mortgage transaction the following  
21 information and documentation:

22 (a) At the time the borrower applies for the loan, a copy of the loan originator's license  
23 document;

24 (b) At the time the borrower applies for the loan, a loan application form that bears the  
25 loan originator's name and license number and the name and license number of the mortgage  
26 banker or mortgage broker that employs the loan originator; and

27 (c) Within 72 hours after the borrower applies for the loan, a form that bears the loan  
28 originator's name and license number and the name and license number of the mortgage  
29 banker or mortgage broker that employs the loan originator for the borrower to use to ac-  
30 knowledge receiving a copy of the loan originator's license.

31 (2) Keep in the loan file assigned to the borrower's loan application the following infor-  
32 mation and documentation:

33 (a) A copy of the loan originator's license; and

34 (b) A copy of the form described in subsection (1)(b) of this section that is signed by the  
35 borrower.

36 (3) Provide the information and documentation described in subsection (1) of this section  
37 to the escrow officer or settlement agent who will close the transaction within 72 hours after  
38 the borrower applied for the loan. If the loan originator is exempt from licensing under sec-  
39 tion 2 (3) of this 2007 Act, the loan originator may state, on a form that the Director of the  
40 Department of Consumer and Business Services has approved, that the loan originator is  
41 exempt from licensing under ORS 59.840 to 59.980. The loan originator shall ensure that the  
42 closing file for the loan contains the information required under this subsection before the  
43 closing date.

44 (4) Amend the application form described in section 3 of this 2007 Act when information  
45 the loan originator submitted with the original form has changed materially.

1        **SECTION 7.** (1) Except as provided in subsections (2) and (3) of this section, the Director  
 2 of the Department of Consumer and Business Services may by order deny, suspend, condition  
 3 or revoke a license to conduct business as a loan originator if the director finds the licensed  
 4 loan originator has violated ORS 59.971.

5        (2) If the director finds that an applicant or licensed loan originator no longer conducts  
 6 business as a loan originator or cannot be located after a reasonable search, the director  
 7 may cancel the application or revoke the license.

8        (3) A licensed loan originator may surrender a license to conduct business as a loan  
 9 originator at any time by filing notice with the director. Unless the director determines that  
 10 the license should be suspended or revoked, the director shall allow the licensed loan origi-  
 11 nator to surrender the license subject to any conditions, limitations or restrictions the di-  
 12 rector may impose.

13        **SECTION 8.** The Director of the Department of Consumer and Business Services by rule  
 14 shall maintain and make available to the public a current list of:

- 15        (1) All licensed or previously licensed loan originators;
- 16        (2) All complaints received against each loan originator; and
- 17        (3) All violations committed by each loan originator under ORS 59.840 to 59.980.

18        **SECTION 9.** ORS 59.840 is amended to read:

19        59.840. As used in ORS 59.840 to 59.980:

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

21        [(2)] (1) "Fraud," "deceit" and "defraud" **include but** are not limited to common-law deceit.

22        [(3)] (2) "License" means a license issued to a mortgage banker, [or] mortgage broker **or loan**  
 23 **originator** under ORS 59.840 to 59.980.

24        [(4)(a)] (3)(a) "Loan originator" means an individual employed by or purporting to act **on behalf**  
 25 **or** as an agent [or independent contractor for] **of** a mortgage banker or mortgage broker that is re-  
 26 quired to be licensed under ORS 59.840 to 59.980, with the expectation by the individual of com-  
 27 pensation or gain that is determined by the amount borrowed or the terms and conditions agreed  
 28 to by the mortgage loan borrower, and having primary job responsibilities that include negotiating  
 29 with a borrower or potential borrower for the purpose of establishing the terms and conditions of  
 30 a mortgage loan.

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

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

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

1 [(e)] (d) “Loan originator” does not include an insurance producer licensed under ORS 744.052  
 2 to 744.089 or insurance consultant licensed under ORS 744.002.

3 (e) **“Loan originator” does not include a person qualified as an independent contractor**  
 4 **under ORS 670.600 who contracts with a mortgage banker or mortgage broker that is re-**  
 5 **quired to be licensed under ORS 59.840 to 59.980.**

6 (f) “Loan originator” does not include a person or group of persons exempted by rule or order  
 7 of the Director **of the Department of Consumer and Business Services.**

8 [(5)] (4) “Mortgage banker”:

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

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

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

13 (b) Does not include:

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

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

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

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

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

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

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

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

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

4 (K) A retirement or pension fund.

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

6 (M) A court appointed fiduciary.

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

8 [(6)] (5) "Mortgage banking loan" means a loan, extension of credit or a retail sales contract  
 9 that is funded exclusively from the mortgage banker's own resources, which is directly or indirectly  
 10 secured by a mortgage or deed of trust or any lien interest on real estate and which is created with  
 11 the consent of the owner of the real property. For purposes of this subsection, "own resources"  
 12 means any of the following:

13 (a) Cash, corporate capital, warehouse credit lines at financial institutions defined in ORS  
 14 706.008 or other sources that are liability items of the mortgage banker's financial statements for  
 15 which its assets are pledged;

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

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

24 [(7)] (6) "Mortgage broker":

25 (a) Means a person who:

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

29 (B) Engages all or part of the time, for the account of others or for the person's own account,  
 30 in the business of accepting funds from one or more persons other than persons enumerated in ORS  
 31 59.035 (4) for investment in real estate paper; or

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

34 (b) Does not include:

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

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

45 (C) A person who purchases real property and issues an obligation to finance the transaction

1 to the seller incidentally to the sale.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 [(8)] (7) "Mortgage loan" means a loan, extension of credit or retail sales contract, other than  
 45 a mortgage banking loan, secured by a mortgage or deed of trust or any lien interest on real estate

1 that is created with the consent of the owner of the real estate.

2 [(9)] (8) "Residential mortgage transaction" means a transaction in which a mortgage, deed of  
 3 trust, purchase money security interest arising under an installment sales contract, or equivalent  
 4 consensual security interest is created or retained in property upon which four or fewer residential  
 5 dwelling units are planned or situated, including but not limited to individual units or condominiums  
 6 and cooperatives. As used in this subsection, "residential dwelling unit" means an improvement de-  
 7 signed for residential occupancy.

8 **SECTION 10.** ORS 59.865 is amended to read:

9 59.865. Except as provided in ORS 59.870, the Director of the Department of Consumer and  
 10 Business Services may by order deny, suspend, condition or revoke a license of a person as a  
 11 mortgage banker or mortgage broker if the director finds that the applicant or licensee:

12 (1) Is insolvent, either in the sense that the liabilities of the applicant or licensee exceed the  
 13 assets of the applicant or licensee or that the applicant or licensee cannot meet the obligations of  
 14 the applicant or licensee as the obligations mature, or is in such financial condition that the appli-  
 15 cant or licensee cannot continue in business with safety to the customers of the applicant or  
 16 licensee.

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

19 (3) Has willfully or repeatedly violated or failed to comply with any provision of ORS 59.840 to  
 20 59.980 or any rule or order of the director.

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

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

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

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

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

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

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

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

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

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

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

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



1 (16) Has knowingly misrepresented to the director *[the training of, examination of or continuing*  
 2 *education time earned by a loan originator employed by the licensee]* **the extent of a loan origina-**  
 3 **tor’s training, education or continuing education or has falsely stated that a loan originator**  
 4 **that the licensee employs is licensed as a loan originator under section 3 of this 2007 Act.**

5 (17) Has willfully or repeatedly employed persons as loan originators who **are not licensed as**  
 6 **loan originators under ORS 59.840 to 59.980 or who** do not meet the training, education or con-  
 7 tinuing education requirements for loan originators.

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

10 **SECTION 11.** ORS 59.880 is amended to read:

11 59.880. (1) The Director of the Department of Consumer and Business Services shall have gen-  
 12 eral supervision and control over all loan originators, mortgage bankers and mortgage brokers re-  
 13 siding or doing business in this state and engaged in any activity subject to the provisions of ORS  
 14 59.840 to 59.980. *[All such persons and their records and everything connected with their activities*  
 15 *shall be subject to examination by the director at any time. The provisions of this section and of any*  
 16 *other section of ORS 59.840 to 59.980 relating to examinations shall extend to any person]*

17 (2) **The director shall conduct regular and periodic examinations of all persons described**  
 18 **in subsection (1) of this section. The director shall determine by rule the schedule and pro-**  
 19 **cedures for conducting the examinations.**

20 (3) **The director may examine the records and business practices of any person described**  
 21 **in subsection (1) of this section:**

22 (a) Who should have been **licensed as a loan originator under section 3 of this 2007 Act,**  
 23 reported as a loan originator under ORS 59.969 or licensed as a mortgage banker or mortgage bro-  
 24 ker; *[, any person]*

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

27 (c) Whose license has expired or has been withdrawn, canceled, suspended, conditioned or re-  
 28 voked.

29 (4) The director may collect from each *[such]* person **whose records or business practices the**  
 30 **director may examine under this section** the actual expenses incurred in *[that]* **the examination.**

31 **SECTION 12.** ORS 59.950 is amended to read:

32 59.950. (1) Every licensed mortgage banker and mortgage broker shall designate and maintain  
 33 a principal place of business **at a physical location in this state** for the transaction of business.  
 34 **The place of business must be accessible to the Director of the Department of Consumer and**  
 35 **Business Services during normal business hours. Records required to be kept under ORS**  
 36 **59.840 to 59.980 must be accessible to the director for inspection. The mortgage banker or**  
 37 **mortgage broker shall also ensure that the place of business is sufficiently secure to protect**  
 38 **the personal information of persons who transact business with the mortgage banker or**  
 39 **mortgage broker. The director by rule may designate areas in close proximity to this state**  
 40 **in which maintaining a place of business will exempt the mortgage banker or mortgage bro-**  
 41 **ker from the requirement to maintain a place of business at a physical location in this state.**

42 (2) If a licensed mortgage banker or mortgage broker intends to transact business at any place  
 43 other than the principal place of business, the licensee shall notify the director *[of the Department*  
 44 *of Consumer and Business Services]*, in writing, not later than 30 days prior to opening another of-  
 45 fice. The notice shall contain the address of any other office. A copy of the license issued to the

1 mortgage banker or mortgage broker shall be displayed in each place of business of the licensee.

2 (3) If there is any change among the members, officers, partners or directors of any licensee, the  
 3 licensee shall notify the director within 30 days of the name, address and occupation of each new  
 4 member, officer, partner or director and provide any other information the director may require.

5 (4) A mortgage banker or mortgage broker whose principal place of business is not in this state  
 6 shall continuously maintain a registered agent in this state. The name and address of the agent shall  
 7 be included in the application for a license. A mortgage banker or mortgage broker shall notify the  
 8 director immediately of any change in the name or address of the registered agent.

9 (5) The registered agent of a mortgage banker or mortgage broker shall be an agent upon whom  
 10 any process, notice or demand required or permitted by law to be served upon the mortgage banker  
 11 or mortgage broker may be served. The director shall be an agent of a mortgage banker or mortgage  
 12 broker if the mortgage banker or mortgage broker fails to appoint or maintain a registered agent  
 13 in this state or the registered agent cannot with reasonable diligence be found.

14 **SECTION 13.** ORS 59.955 is amended to read:

15 59.955. Prior to the closing of any mortgage loan or any mortgage banking loan, [*the*] **a licensed**  
 16 mortgage banker, [*or*] mortgage broker **or loan originator** shall supply the borrower with:

17 (1) A disclosure as required by the real estate lending provisions of 15 U.S.C. 1601 et seq. and  
 18 Regulation Z, 12 C.F.R. Part 226; **and**

19 **(2) A copy of the form described in section 6 (1)(c) of this 2007 Act or, if the loan origi-**  
 20 **nator is exempt from licensing under section 2 (3) of this 2007 Act, a statement, on a form**  
 21 **that the Director of the Department of Consumer and Business Services has approved, that**  
 22 **the loan originator is exempt from licensing under section 2 (3) of this 2007 Act.**

23 **SECTION 14.** ORS 59.962 is amended to read:

24 59.962. (1) With the permission of the lender, note owner, note holder or other holder of an in-  
 25 terest in a note, a mortgage banker or mortgage broker may service or collect any mortgage bank-  
 26 ing loan or mortgage loan in its own name or the name of the lender, note owner, note holder or  
 27 other holder of an interest in the note.

28 (2) Except as provided in ORS 59.840 to 59.980, nothing in subsection (1) of this section is in-  
 29 tended to grant the Director of the Department of Consumer and Business Services the authority  
 30 to regulate the servicing or collection of any mortgage banking loan or mortgage loan by a mort-  
 31 gage banker or mortgage broker.

32 (3) As used in this section:

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

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

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

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

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

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

43 (B) Collecting or remitting, or having the right or obligation to collect or remit, for any lender,  
 44 note owner, note holder or other holder of an interest in a note or for a mortgage banker's or  
 45 mortgage broker's own account, payments, interest, principal and trust items, including but not

1 limited to hazard insurance and taxes, on a mortgage banking loan or mortgage loan in accordance  
 2 with the terms of the loan, and includes loan payment follow-up, delinquency loan follow-up, loan  
 3 analysis and any notifications to the borrower that are necessary to enable the borrower to keep  
 4 the loan current and in good standing; and

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

9 **SECTION 15.** 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 the banker or broker. The banker or broker shall notify the director within [30] **three business** days  
 13 of the employment or termination of employment of a loan originator.

14 (2) An applicant for issuance of a mortgage banker or mortgage broker license under ORS 59.850  
 15 shall include with the application evidence acceptable to the director that each individual the ap-  
 16 plicant has hired or intends to hire as a loan originator **is licensed under section 3 of this 2007**  
 17 **Act.** [has:]

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

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

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

24 (3) A mortgage banker or mortgage broker that applies for renewal of a license [pursuant to]  
 25 **under** ORS 59.855 shall include with the application evidence acceptable to the director that each  
 26 individual employed by the banker or broker as a loan originator **is licensed under section 3 of**  
 27 **this 2007 Act.** [has:]

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

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

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

34 (4) 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 who is an insurance producer or insurance consultant licensed  
 37 under ORS 744.002 and who is [a] **employed** full-time **as a** loan originator as defined in ORS 59.970  
 38 **is licensed under section 3 of this 2007 Act.** [has:]

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

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

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

45 (5) A mortgage banker or mortgage broker that applies for renewal of a license pursuant to ORS

1 59.855 shall include with the application evidence acceptable to the director that each individual  
 2 employed by the mortgage banker or mortgage broker as a loan originator who is an insurance  
 3 producer or insurance consultant licensed under ORS 744.002 and who is [a] **employed full-time as**  
 4 **a loan originator as defined in ORS 59.970 is licensed under section 3 of this 2007 Act.** [has:]

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

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

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

11 (6) An applicant under subsection (2), (3), (4) or (5) of this section shall, at the time of applica-  
 12 tion, certify that the applicant has conducted criminal [records checks] **background investigations**  
 13 required under ORS 59.970 and 59.972 and:

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

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

19 (7) Except as provided in subsections (4) and (5) of this section, a mortgage banker or mortgage  
 20 broker may voluntarily report to the director regarding employees who would qualify as loan origi-  
 21 nators if not exempted under ORS 59.840 [(4)] (3). Voluntary reporting by a banker or broker under  
 22 this subsection does not make the reported employees subject to **licensing**, training, examination  
 23 or continuing education requirements or other laws governing loan originators.

24 (8) The director shall keep records that include notifications filed under subsection (1) of this  
 25 section and exceptions to certifications under subsection (6) of this section. The director shall re-  
 26 tain the records for a period of not less than three years. The director shall keep for 10 years a  
 27 record of any complaint against a loan originator that has been determined to be justified [pursuant  
 28 to] **under** ORS 59.973.

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

33 **SECTION 16.** ORS 59.970 is amended to read:

34 59.970. (1) As used in this section, "loan originator" means an individual who:

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

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

38 (c) Would qualify as a full-time loan originator if not exempted under ORS 59.840 [(4)] (3).

39 (2) An individual who is an insurance producer or insurance consultant licensed under ORS  
 40 744.002 and who is employed full-time as a loan originator shall **be licensed under section 3 of this**  
 41 **2007 Act and undergo a criminal background investigation as required in ORS 59.972.**[:]

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

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

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

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

4        **SECTION 17.** ORS 59.971 is amended to read:

5        59.971. (1) A person employed by a mortgage banker or mortgage broker as a loan originator  
 6 **or a person licensed as a loan originator under section 3 of this 2007 Act** may not:

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

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

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

13        (d) Fail to meet the training, education or continuing education requirements for loan origina-  
 14 tors **or fail to obtain or renew a license under section 3 of this 2007 Act.**

15        (2) *[A person may not be employed by]* A mortgage banker or mortgage broker **may not employ**  
 16 **a person** as a loan originator as defined in ORS 59.840 or 59.970 if the person has been convicted  
 17 of any crime or category of crime specified by the director by rule.

18        **SECTION 18.** ORS 59.972 is amended to read:

19        59.972. (1)(a) *[A mortgage banker or mortgage broker]* **The Director of the Department of**  
 20 **Consumer and Business Services** shall conduct a criminal *[records check]* **background investi-**  
 21 **gation** of each individual who the mortgage banker or mortgage broker employs *[or intends to em-*  
 22 *ploy as a loan originator].*

23        **(b) This section does not apply to employees who perform only clerical tasks or who are**  
 24 **not otherwise required to be individually licensed under ORS 59.840 to 59.980.**

25        **(2) The criminal background investigation shall include fingerprint identification through**  
 26 **the Integrated Automated Fingerprint Identification System and require a search through**  
 27 **the National Crime Information Center maintained by the Federal Bureau of Investigation.**

28        *[(2) A mortgage banker or mortgage broker shall report to the Director of the Department of Con-*  
 29 *sumer and Business Services the results of each criminal records check conducted under subsection (1)*  
 30 *of this section.]*

31        (3) The director shall adopt rules:

32        (a) Necessary for the implementation and administration of criminal *[records checks]* **back-**  
 33 **ground investigations** required under this section and ORS 59.970; and

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

36        **SECTION 19.** Section 7, chapter 526, Oregon Laws 2003, as amended by section 42, chapter 22,  
 37 Oregon Laws 2005, is amended to read:

38        **Sec. 7.** (1) The training and examination requirements described in ORS 59.969 and 59.970 do  
 39 not apply to an individual who, on January 1, 2004:

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

41        (b) Would qualify as a loan originator if not exempted under ORS 59.840 *[(4)]* **(3)**; and

42        (c) Has worked full-time performing the functions of a loan originator since January 1, 2002.

43        (2) The continuing education requirements described in ORS 59.969 and 59.970 apply to an indi-  
 44 vidual who is an insurance producer or insurance consultant licensed under ORS 744.002 and who  
 45 is a loan originator as defined in ORS 59.970. The two-year period allowed for the individual to

1 complete the continuing education requirements begins on the filing date of the first application  
 2 under ORS 59.969 that lists the individual.

3 **SECTION 20.** ORS 59.850 is amended to read:

4 59.850. (1) The Director of the Department of Consumer and Business Services by rule shall es-  
 5 tablish procedures for licensing mortgage bankers or mortgage brokers. The director may coordinate  
 6 licensing with any national registration or licensing system.

7 (2) An applicant for a license as a mortgage banker or mortgage broker, or a managing partner,  
 8 director, executive officer or other individual occupying a similar position or performing similar  
 9 functions for the applicant, shall have, during the five years immediately preceding the time of ap-  
 10 plication, not less than three years' experience in the mortgage business, three years' experience  
 11 negotiating loans in a related business satisfactory to the Director **of the Department of Con-**  
 12 **sumer and Business Services** or three years' equivalent lending experience in a related business  
 13 satisfactory to the director.

14 (3) If a license as a mortgage banker or mortgage broker is issued to a person other than an  
 15 individual, at least one managing partner, director, executive officer or other individual occupying  
 16 a similar position or performing similar functions for the person shall, at all times during the term  
 17 of the license, satisfy the experience requirement described in subsection (2) of this section.

18 (4) Every applicant for a license as a mortgage banker or mortgage broker shall file with the  
 19 Director **of the Department of Consumer and Business Services** a corporate surety bond or  
 20 irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 as the director  
 21 may approve by rule running to the State of Oregon in a sum to be determined by the director by  
 22 rule.

23 (5) The total amount of the corporate surety bond or irrevocable letter of credit for a single  
 24 applicant under subsection (4) of this section shall be not less than \$25,000 but not more than  
 25 \$50,000, regardless of the number of offices of the applicant. If an applicant has more than one office  
 26 in this state to engage in residential mortgage transactions as a mortgage banker or mortgage bro-  
 27 ker, the amount of the bond or letter of credit shall increase for each additional office in an amount  
 28 determined by the director by rule. The amount of the increase in the bond or letter of credit for  
 29 each additional office shall be not less than \$5,000 but not more than \$10,000. The director may  
 30 adjust the minimum amount of the increase in the bond or letter of credit for additional offices as  
 31 necessary to comply with the \$50,000 limit.

32 (6) If the application, surety bond or irrevocable letter of credit and fees are in order and the  
 33 director is satisfied that the application should not be denied upon one or more of the grounds  
 34 specified in ORS 59.865, 59.870 or 59.875, the director shall license the mortgage banker or mortgage  
 35 broker.

36 (7) A licensee shall amend the license application and, if necessary, increase the amount of the  
 37 corporate surety bond or irrevocable letter of credit as described in subsection (5) of this section  
 38 when there are material changes in the information contained in the original application.

39 (8) The director shall:

40 (a) Charge and collect fees for initial and renewal license applications;

41 (b) Set by rule all fees required under this section. Fees shall be set to reflect those amounts  
 42 sufficient to meet the costs of administering ORS 59.840 to 59.980, including those amounts sufficient  
 43 to establish and maintain a reasonable emergency fund; and

44 (c) Set by rule the amounts of corporate surety bonds and irrevocable letters of credit required  
 45 under this section.

1 (9) The fees under this section are not refundable except for those fees that the director deter-  
 2 mines by rule may be refundable.

3 **SECTION 21.** (1) Except as provided in subsection (2) of this section, sections 2 to 8 of  
 4 this 2007 Act and the amendments to ORS 59.840, 59.850, 59.865, 59.880, 59.950, 59.955, 59.962,  
 5 59.969, 59.970, 59.971 and 59.972 and section 7, chapter 526, Oregon Laws 2003, by sections 9  
 6 to 20 of this 2007 Act apply to persons who conduct business as loan originators or provide  
 7 services in connection with mortgage loans, mortgage banking loans or residential mortgage  
 8 transactions in this state on or after January 1, 2008.

9 (2) For persons who are employed as a loan originators in this state on January 1, 2008,  
 10 the Director of the Department of Consumer and Business Services shall specify by rule the  
 11 date by which the persons must comply with the requirements of sections 2 to 8 of this 2007  
 12 Act and the amendments to ORS 59.840, 59.850, 59.865, 59.880, 59.950, 59.955, 59.962, 59.969,  
 13 59.970, 59.971 and 59.972 and section 7, chapter 526, Oregon Laws 2003, by sections 9 to 20 of  
 14 this 2007 Act.

15 (3) The amendments to ORS 59.972 by section 18 of this 2007 Act apply only to criminal  
 16 background investigations conducted on or after January 1, 2008.

17 (4) The amendments to ORS 59.880 by section 11 of this 2007 Act apply to examinations  
 18 conducted on or after January 1, 2008.

19 **SECTION 22.** (1) Sections 1 to 8 of this 2007 Act and the amendments to ORS 59.840,  
 20 59.850, 59.865, 59.880, 59.950, 59.955, 59.962, 59.969, 59.970, 59.971 and 59.972 and section 7,  
 21 chapter 526, Oregon Laws 2003, by sections 9 to 20 of this 2007 Act become operative January  
 22 1, 2008.

23 (2) The Director of the Department of Consumer and Business Services may take any  
 24 action before the operative date specified in this section that is necessary to enable the di-  
 25 rector to exercise, on and after the operative date specified in this section, all the duties,  
 26 functions and powers conferred upon the director by sections 1 to 8 of this 2007 Act and the  
 27 amendments to ORS 59.840, 59.850, 59.865, 59.880, 59.950, 59.955, 59.962, 59.969, 59.970, 59.971  
 28 and 59.972 and section 7, chapter 526, Oregon Laws 2003, by sections 9 to 20 of this 2007 Act.

29 **SECTION 23.** This 2007 Act being necessary for the immediate preservation of the public  
 30 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect  
 31 on its passage.

32