

## HOUSE AMENDMENTS TO A-ENGROSSED SENATE BILL 965

By COMMITTEE ON CONSUMER PROTECTION

June 11

1 On page 1 of the printed A-engrossed bill, line 2, delete “creating new provisions; amending ORS  
2 82.025 and 708A.255;”.

3 In line 20, after “Lender” insert a colon and begin a new paragraph and insert “(a)” and after  
4 “banker” delete the rest of the line and insert “or mortgage broker, both as defined in ORS  
5 59.840,”.

6 On page 2, line 1, delete “ORS 706.008, a credit union as defined in ORS 723.006”.

7 After line 2, insert:

8 “(b) Does not mean:

9 “(A) A bank as defined in ORS 706.008 or a bank affiliate or subsidiary; or

10 “(B) A credit union as defined in ORS 723.006 or 723.008 or a credit union affiliate or  
11 subsidiary.”.

12 In line 12, after “loan” insert “the Director of the Department of Consumer and Business Ser-  
13 vices identifies as a nontraditional mortgage product”.

14 In line 14, delete “Department of Consumer and Business Services” and insert “director”.

15 After line 28, insert:

16 “(9) ‘Qualified automated underwriting system’ means:

17 “(a) An electronic or computer program commonly used in the lending industry that is devel-  
18 oped, reviewed or accepted for underwriting purposes by the Office of Federal Housing Enterprise  
19 Oversight, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corpo-  
20 ration; or

21 “(b) An electronic or computer program that is developed for proprietary use by a lender and  
22 accepted for underwriting purposes by the Office of Federal Housing Enterprise Oversight, the  
23 Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, any other  
24 federal housing authority or federal government service or the department.”.

25 In line 29, delete “(9)” and insert “(10)”.

26 In line 31, delete “(10)” and insert “(11)”.

27 On page 3, line 37, after the period begin a new paragraph and insert:

28 “(4) The use of a qualified automated underwriting system to underwrite and approve a loan  
29 creates a rebuttable presumption that the lender has underwritten and approved the loan in com-  
30 pliance with the requirements of subsections (1) to (3) of this section.

31 “(5)”.

32 In line 43, delete “(4)” and insert “(6)”.

33 On page 4, line 9, after “with” delete the rest of the line.

34 In line 10, after “rules” insert “of the Director of the Department of Consumer and Business  
35 Services”.

1 In line 17, delete “department” and after “rules” insert “of the director”.

2 On page 6, line 32, after “The” insert “Director of the”.

3 Delete lines 34 through 45.

4 On page 7, delete lines 1 through 21 and insert:

5 **“SECTION 11. (1) If the Director of the Department of Consumer and Business Services**  
6 **has reasonable cause to believe that a person has engaged or is engaging in any violation of**  
7 **any provision of sections 2 to 9 of this 2007 Act, a rule of the director adopted under section**  
8 **10 of this 2007 Act or an order of the director to enforce a provision of sections 2 to 9 of this**  
9 **2007 Act, the director may bring suit in the name and on behalf of the State of Oregon in**  
10 **the circuit court of any county of this state to enjoin the violation and to enforce compliance**  
11 **with the provision, rule or order. Upon a proper showing, a court shall grant a permanent**  
12 **or temporary injunction, restraining order or writ of mandamus.**

13 **“(2) The court may fine the person against whom the court order is entered under sub-**  
14 **section (1) of this section not more than \$5,000 for each violation. The fine shall be entered**  
15 **as a judgment and paid to the General Fund of the State Treasury. Each violation of the**  
16 **court order is a separate offense. For a continuing violation, each day’s continuance is a**  
17 **separate violation, but the maximum penalty for any continuing violation may not exceed**  
18 **\$20,000 for each offense.**

19 **“(3) If the court finds that the person has violated any provision of sections 2 to 9 of this**  
20 **2007 Act, a rule of the director adopted under section 10 of this 2007 Act or an order of the**  
21 **director to enforce a provision of sections 2 to 9 of this 2007 Act, the court may appoint a**  
22 **receiver, who may be the director, for the person or the person’s assets. The court may not**  
23 **require the director to post a bond. The court may award reasonable attorney fees to the**  
24 **director if the director prevails in an action under this section. The court may award rea-**  
25 **sonable attorney fees to a person who prevails in an action under this section if the court**  
26 **determines that the director had no objectively reasonable basis for asserting the claim or**  
27 **no reasonable basis for appealing an adverse decision of the trial court.**

28 **“(4) The director may include in any action authorized by this section:**

29 **“(a) A claim for restitution or damages under section 12 of this 2007 Act on behalf of the**  
30 **persons injured by the act or practice constituting the subject matter of the action. The**  
31 **court shall have jurisdiction to award appropriate relief to the persons, if the court finds that**  
32 **enforcement of the rights of the persons by private civil action, whether by class action or**  
33 **otherwise, would be so burdensome or expensive as to be impractical; or**

34 **“(b) A claim for disgorgement of illegal gains or profits derived. Any recovery under this**  
35 **paragraph shall be turned over to the General Fund of the State Treasury unless the court**  
36 **requires other disposition.”.**

37 In line 25, after “the” insert “Director of the”.

38 In line 27, delete “department” and insert “director”.

39 On page 8, line 1, delete “procures,” and insert “knowingly”.

40 In line 2, after “the” insert “Director of the”.

41 In line 3, delete “department” and insert “director”.

42 Delete lines 10 through 35 and insert:

43 **“SECTION 14. (1) The Director of the Department of Consumer and Business Services**  
44 **may make such public or private investigations within or outside this state as the director**  
45 **deems necessary to determine whether a person has violated or is about to violate any pro-**

1 vision of sections 2 to 9 of this 2007 Act or any rule or order of the director, or to aid in the  
2 enforcement of sections 2 to 9 of this 2007 Act or in the formulation of rules under sections  
3 2 to 9 of this 2007 Act.

4 “(2) For the purpose of an investigation or proceeding under sections 2 to 9 of this 2007  
5 Act, the director may administer oaths and affirmations, subpoena witnesses, compel their  
6 attendance, take evidence and require the production of books, papers, correspondence,  
7 memoranda, agreements or other documents or records that the director deems relevant or  
8 material to the inquiry. Each witness who appears before the director under a subpoena shall  
9 receive the fees and mileage provided for witnesses in ORS 44.415 (2).

10 “(3) If a person fails to comply with a subpoena so issued or a party or witness refuses  
11 to testify on any matters, the judge of the circuit court or of any county, on the application  
12 of the director, shall compel obedience by proceedings for contempt as in the case of diso-  
13 bedience of the requirements of a subpoena issued from the court or a refusal to testify be-  
14 fore the court.

15 “(4) The director may require or permit a person to file a statement in writing, under  
16 oath or otherwise as the director determines, as to all the facts and circumstances con-  
17 cerning the matter to be investigated.

18 “(5) The director may publish information concerning any violation of sections 2 to 9 of  
19 this 2007 Act or any rule or order of the director.

20 “(6) If the director has reason to believe that any person has engaged, is engaging or is  
21 about to engage in any violation of sections 2 to 9 of this 2007 Act, the director may issue  
22 an order, subject to section 15 of this 2007 Act, directed to the person to cease and desist  
23 from the violation or threatened violation.”.

24 In line 37, before “Department” insert “Director of the”.

25 In line 38, delete “department” and insert “director”.

26 In line 40, delete “department” and insert “director”.

27 In line 41, delete “department” and insert “director”.

28 In line 44, delete “department” and insert “director”.

29 On page 9, line 1, after “Director” delete the rest of the line.

30 In line 2, after “the” delete the rest of the line and insert “previous order of the director.”.

31 Delete lines 3 through 45.

32 On page 10, delete lines 1 through 28 and insert:

33  
34 **“PREPAYMENT**

35  
36 **“SECTION 16. (1) As used in this section:**

37 **“(a) ‘Annual percentage rate’ means the annual percentage rate for a home loan calcu-**  
38 **lated according to the provisions of the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the**  
39 **regulations adopted thereunder by the Federal Reserve Board.**

40 **“(b) ‘Home loan’ means a home loan, including an open-end loan plan as defined in ORS**  
41 **725.345, other than a reverse mortgage transaction, in which:**

42 **“(A) The principal amount of the loan does not exceed the conforming loan size limit for**  
43 **a comparable dwelling as established from time to time by the Federal National Mortgage**  
44 **Association;**

45 **“(B) The borrower is a natural person;**

1       “(C) The debt is incurred by the borrower primarily for personal, family or household  
2 purposes;

3       “(D) The loan is secured by a mortgage or trust deed on real estate upon which there is  
4 located or is to be located a structure or structures, intended principally for occupancy of  
5 one to four families, that is or will be occupied by the borrower as the borrower’s principal  
6 dwelling; and

7       “(E) The property described in subparagraph (D) of this paragraph is located in this state.

8       “(c) ‘Lender’ means a financial institution as defined in ORS 706.008, a savings associ-  
9 ation as defined in ORS 722.004 or a mortgage banker as defined in ORS 59.840.

10       “(2) If a lender makes a home loan with an annual percentage rate in excess of six per-  
11 cent, the borrower has the right to prepay all or part of the loan at any time. If a lender  
12 makes a home loan with a variable rate, the borrower has the right at any time the rate is  
13 in excess of six percent to prepay all or part of the loan. If the prepayment occurs at least  
14 one year after the loan is made, or after the loan rate has continued to be in excess of six  
15 percent for at least one year, the lender may not charge the borrower a prepayment penalty.  
16 If the prepayment occurs less than one year after the loan is made, or after the loan rate  
17 has continued to be in excess of six percent for less than one year, the lender may not  
18 charge the borrower a prepayment penalty unless the loan document expressly provides for  
19 a prepayment penalty and the lender has complied with ORS 82.160.

20       “(3) Subsection (2) of this section does not apply to any loan under a federal program  
21 requiring the imposition of a prepayment penalty.”.

22       In line 32, delete “18.” and insert “17. (1)” and after “2” delete the rest of the line and insert  
23 “to 10, 11 (1) to (3) and (4)(b) and 13 to 15 of this 2007 Act”.

24       In line 33, delete “708A.255 by sections 16 and 17 of this 2007 Act”.

25       After line 34, insert:

26       “(2) Sections 11 (4)(a) and 12 of this 2007 Act apply to nontraditional mortgage products origi-  
27 nated on or after July 1, 2008.

28       “(3) Section 16 of this 2007 Act applies to home loans originated on or after the effective date  
29 of this 2007 Act.”.

30       In line 38, delete “19” and insert “18”.

31       In line 44, delete “20” and insert “19”.

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