

Senate Bill 965

Sponsored by Senators AVAKIAN, BROWN

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**.

Prohibits certain lending activities in connection with high-cost home loans. Creates private cause of action for damages.

Applies to loans for which application is first made on or after January 1, 2008.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to lending practices; creating new provisions; amending ORS 82.025 and 708A.255; and de-
3 claring an emergency.

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

5 **SECTION 1. Sections 2 to 10 of this 2007 Act shall be known and may be cited as the**
6 **Oregon Home Loan Fairness Act.**

7 **SECTION 2. As used in sections 2 to 10 of this 2007 Act:**

8 (1) "Affiliate" means any company that controls, is controlled by or is under common
9 control with another company, as set forth in the Bank Holding Company Act of 1956 (12
10 U.S.C. 1841 et seq.).

11 (2) "Annual percentage rate" means the annual percentage rate for a home loan calcu-
12 lated according to the provisions of the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the
13 regulations adopted thereunder by the Federal Reserve Board.

14 (3) "Bona fide error" includes, but is not limited to, a clerical error, a calculation error,
15 an error resulting from a computer malfunction, a programming error or a printing error.
16 "Bona fide error" does not include an error of legal judgment with respect to a person's ob-
17 ligations under sections 4 to 8 of this 2007 Act.

18 (4)(a) "Bona fide loan discount points" means loan discount points knowingly paid by the
19 borrower and funded through any source:

20 (A) For the purpose of reducing the interest rate or time price differential applicable to
21 the home loan;

22 (B) That result in a bona fide reduction of the interest rate or time price differential
23 applicable to the home loan; and

24 (C) For which the amount of the interest rate reduction purchased by the discount points
25 is reasonably consistent with established industry norms and practices for secondary mort-
26 gage market transactions.

27 (b) For purposes of this subsection, a point is presumed to be a bona fide loan discount
28 point if it reduces the interest rate by a minimum of 25 basis points, provided all other terms
29 of the loan remain the same.

30 (5) "High-cost home loan" means a home loan in which the terms of the loan exceed one

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 or more of the thresholds defined in subsection (11) of this section.

2 (6) "Home loan" means a home loan, including an open-end loan plan as defined in ORS
3 725.345, other than a reverse mortgage transaction, in which:

4 (a) The principal amount of the loan does not exceed the conforming loan size limit for
5 a comparable dwelling as established from time to time by the Federal National Mortgage
6 Association;

7 (b) The borrower is a natural person;

8 (c) The debt is incurred by the borrower primarily for personal, family or household
9 purposes;

10 (d) The loan is secured by a mortgage or trust deed on real estate upon which there is
11 located or is to be located a structure or structures, intended principally for occupancy of
12 one to four families, that is or will be occupied by the borrower as the borrower's principal
13 dwelling; and

14 (e) The property described in paragraph (d) of this subsection is located in this state.

15 (7) "Lender" means a financial institution as defined in ORS 706.008, a savings association
16 as defined in ORS 722.004 or a mortgage banker as defined in ORS 59.840.

17 (8) "Loan flipping" means making a home loan to a borrower who refinances an existing
18 home loan when the new loan does not have a tangible net benefit to the borrower consid-
19 ering all of the circumstances, including the terms of both the new and refinanced loans, the
20 cost of the new loan and the borrower's situation.

21 (9) "Points and fees" means:

22 (a) All items listed in 15 U.S.C. 1605(a)(1) to (4), except interest or time price differential;

23 (b) All charges for items listed under 12 C.F.R. 226.4(c)(7), if the lender receives direct
24 or indirect compensation in connection with the charge or the charge is paid to an affiliate
25 of the lender;

26 (c) All compensation paid directly or indirectly to a mortgage broker that is not other-
27 wise included under paragraphs (a) and (b) of this subsection; and

28 (d) The cost of all premiums financed by the lender, directly or indirectly, for any credit
29 life, credit disability, credit unemployment or credit property insurance, or any other life or
30 health insurance, or any payments financed by the lender directly or indirectly for any debt
31 cancellation or suspension agreement or contract. For purposes of this paragraph, insurance
32 premiums calculated and paid on a monthly basis are not considered financed by the lender.

33 (10) "Special mortgage" means a mortgage originated, subsidized or guaranteed by or
34 through a state, tribal or local government or a nonprofit organization that bears a below-
35 market interest rate at the time of origination or has nonstandard payment terms beneficial
36 to the borrower. For purposes of this subsection, "nonstandard payment terms" includes, but
37 is not limited to:

38 (a) Payments that vary with income;

39 (b) Payments that are limited to a percentage of income; and

40 (c) Specified conditions under which no payments are required.

41 (11) "Thresholds" means:

42 (a) For a first lien mortgage loan, the annual percentage rate of the home loan at con-
43 summation of the transaction exceeds seven percentage points over the yield on United
44 States Government securities having comparable periods of maturity to the loan maturity
45 measured as of the 15th day of the month immediately preceding the month in which the

1 application for extension of credit is received by the lender. If the terms of the home loan
2 offer any initial or introductory period and the annual percentage rate is less during that
3 period than the rate that will apply after the end of the initial or introductory period, the
4 annual percentage rate considered for purposes of this paragraph shall be the rate that ap-
5 plies after the initial or introductory period;

6 (b) For a subordinate mortgage lien, the annual percentage rate of the home loan at
7 consummation of the transaction equals or exceeds nine percentage points over the yield on
8 United States Government securities having comparable periods of maturity on the 15th day
9 of the month immediately preceding the month in which the application for extension of
10 credit is received by the lender. If the terms of the home loan offer any initial or introduc-
11 tory period and the annual percentage rate is less during that period than the rate that will
12 apply after the end of the initial or introductory period, the annual percentage rate consid-
13 ered for purposes of this paragraph shall be the rate that applies after the initial or intro-
14 ductory period; or

15 (c) The total points and fees applicable to the home loan exceed five percent of the total
16 loan amount if the total loan amount is \$50,000 or more, six percent of the total loan amount
17 if the total loan amount is \$50,000 or more and the loan is a purchase money loan guaranteed
18 by the Federal Housing Administration or the United States Department of Veterans Affairs,
19 or the greater of six percent of the total loan amount or \$1,000, if the total loan amount is
20 less than \$50,000. For purposes of this paragraph, the following discount points are excluded
21 from the calculation of the total points and fees payable by the borrower:

22 (A) Up to and including two bona fide loan discount points payable by the borrower in
23 connection with the loan transaction, if the interest rate from which the loan's interest rate
24 will be discounted does not exceed by more than one percentage point the yield on United
25 States Government securities having comparable periods of maturity to the loan maturity
26 measured as of the 15th day of the month immediately preceding the month in which the
27 application is received; and

28 (B) Any and all bona fide loan discount points funded directly or indirectly through a
29 grant from a federal, state or local government agency or an organization that is recognized
30 as tax exempt under section 501(c)(3) of the Internal Revenue Code.

31 (12) "Total loan amount" means the principal of the loan minus points and fees that are
32 included in the principal amount.

33 **SECTION 3.** (1) The Legislative Assembly finds and declares that:

34 (a) Predatory mortgage lending has become an increasing problem nationwide,
35 exacerbating the loss of equity in homes and causing the number of foreclosures to increase
36 dramatically.

37 (b) Although the marketplace appears to operate effectively for conventional mortgages,
38 too many homeowners are finding themselves victims of predatory lenders in the subprime
39 market that provide loans with high costs and abusive terms that are unnecessary to secure
40 the repayment of the loans.

41 (c) Predatory lending practices have helped fuel an unsustainable rise in housing prices
42 and have left many homeowners with loans they cannot afford to repay.

43 (d) With home prices now falling in many areas of the country, and with millions of
44 high-cost mortgages poised to reset to higher interest rates, the national economy is
45 threatened with the prospect of mass foreclosures.

1 (e) The national trend of falling housing prices and rising foreclosure rates has not yet
2 reached Oregon, and there is still time to take effective action that will prevent thousands
3 of Oregonians from entering into predatory mortgages and facing unnecessary foreclosures
4 in the future.

5 (2) The Legislative Assembly intends that the Oregon Home Loan Fairness Act protect
6 Oregon's economy from the threat of widespread foreclosures and provide homeowners with
7 access to home loans on fair and equitable terms.

8 **SECTION 4.** (1)(a) A high-cost home loan may not contain a provision that permits the
9 lender, in the lender's sole discretion, to accelerate payments required under the loan.

10 (b) This subsection does not prohibit any good faith acceleration of payments required
11 under the loan due to the borrower's failure to abide by the material terms of the loan.

12 (2)(a) A high-cost home loan may not contain a scheduled payment that is more than
13 twice as large as the average of earlier scheduled payments, unless the larger payment be-
14 comes due and payable at least 15 years after the origination date of the loan.

15 (b) This subsection does not apply when the payment schedule is adjusted to the seasonal
16 or irregular income of the borrower.

17 (3) A high-cost home loan may not contain a payment schedule with regular periodic
18 payments that cause the principal balance of the loan to increase.

19 (4)(a) A high-cost home loan may not contain a provision that increases the interest rate
20 on the loan after default.

21 (b) This subsection does not apply to interest rate changes in a variable rate loan if the
22 changes are consistent with the provisions of the loan documents and are not triggered by
23 the event of default or the acceleration of payments required under the loan.

24 (5) A high-cost home loan may not include terms under which more than two periodic
25 payments required under the loan are consolidated and paid in advance from the loan pro-
26 ceeds provided to the borrower.

27 (6)(a) A lender may not charge a borrower any fees to modify, renew, extend or amend
28 a high-cost home loan or to defer any payment due under the terms of a high-cost home loan
29 if, after the modification, renewal, extension or amendment:

30 (A) The loan is still a high-cost home loan; or

31 (B) The loan is no longer a high-cost home loan, but the annual percentage rate has not
32 been decreased by at least two percentage points.

33 (b) For purposes of this subsection, fees do not include interest that is otherwise payable
34 and consistent with the provisions of the loan documents.

35 (c) This subsection does not prohibit a lender from charging points and fees in connection
36 with any additional proceeds, over and above the current principal balance of the existing
37 high-cost home loan, received by the borrower in connection with the modification, renewal,
38 extension or amendment. Points and fees charged on the additional proceeds must reflect the
39 lender's typical point and fee structure for high-cost home loans.

40 (7) A lender may not charge a borrower more than \$75 to defer any payment due under
41 the terms of a high-cost home loan.

42 (8) A lender may not make a high-cost home loan without first receiving certification
43 from a third-party, nonprofit counselor approved by the United States Department of Hous-
44 ing and Urban Development or the Department of Consumer and Business Services that the
45 borrower has received counseling on the advisability of the loan transaction.

1 **(9) A high-cost home loan may not be subject to:**

2 **(a) A mandatory arbitration clause that is oppressive, unfair, unconscionable or sub-**
3 **stantially in derogation of the rights of consumers;**

4 **(b) A provision that restricts the ability of a borrower to assert any claim or defense;**
5 **or**

6 **(c) A requirement that an action that could properly be brought in the jurisdiction where**
7 **the loan closed be brought in a jurisdiction that is less convenient or more costly to the**
8 **borrower or that is less speedy for the resolution of a dispute.**

9 **(10)(a) A high-cost home loan may not finance, directly or indirectly, any credit life,**
10 **credit disability, credit unemployment or credit property insurance premiums, any other life**
11 **or health insurance premiums or any payments directly or indirectly for any debt cancella-**
12 **tion or suspension agreement or contract.**

13 **(b) For purposes of this subsection, insurance premiums or debt cancellation or suspen-**
14 **sion fees calculated and paid on a monthly basis are not considered financed by the loan.**

15 **(11) A lender or mortgage broker making or arranging a high-cost home loan may not**
16 **engage in loan flipping.**

17 **(12)(a) A lender making a high-cost home loan may not refinance an existing home loan**
18 **that is a special mortgage if, as a result of the refinancing, the borrower will lose one or**
19 **more of the benefits of the special mortgage.**

20 **(b) This subsection does not apply if the lender receives, prior to the date the refinancing**
21 **loan closes, written documentation stating that the borrower has received home loan coun-**
22 **seling that describes the advantages and disadvantages of the refinancing. The counseling**
23 **must have been received from a consumer credit counselor certified under federal law or**
24 **from the lender who originated, subsidized or guaranteed the special mortgage loan.**

25 **(13) A lender or mortgage broker may not make or arrange a high-cost home loan with-**
26 **out regard to the ability of the borrower to repay the loan. The lender or mortgage broker**
27 **shall consider the borrower's current and expected income, current obligations, employment**
28 **status and other financial resources, other than the borrower's equity in the dwelling that**
29 **secures repayment of the loan, as verified by detailed documentation of all sources of income**
30 **and corroborated by independent verification. There is a rebuttable presumption that a loan**
31 **is made with regard to repayment ability if the lender or mortgage broker demonstrates that**
32 **at the time the loan is consummated the borrower's total monthly debts, including amounts**
33 **owed under the loan, do not exceed 50 percent of the resident borrower's monthly gross in-**
34 **come and the lender follows the residual income guidelines established in 38 C.F.R. 36.4337(e).**

35 **(14) In making a high-cost home loan, a lender may not, directly or indirectly, finance**
36 **any points and fees in an amount that exceeds three percent of the principal amount of the**
37 **loan.**

38 **(15) A lender may not pay a contractor under a home improvement contract from the**
39 **proceeds of a high-cost home loan unless the lender is presented with a signed and dated**
40 **completion certificate showing that the home improvements have been completed, and pay-**
41 **ment is made:**

42 **(a) By an instrument payable to the borrower or jointly to the borrower and the con-**
43 **tractor; or**

44 **(b) At the election of the borrower, through a third-party escrow agent in accordance**
45 **with terms established in a written agreement signed by the borrower, the lender and the**

1 contractor prior to the disbursement.

2 (16) In making or arranging a high-cost home loan, a lender or mortgage broker may not
3 recommend or encourage default on an existing loan or other debt prior to and in connection
4 with the closing or planned closing of a high-cost home loan that refinances all or any por-
5 tion of the existing loan or debt.

6 (17) In making or arranging a high-cost home loan, a lender or mortgage broker may not
7 accept or give any fee, kickback, thing of value, portion, split or percentage of charges, other
8 than as payment for goods or facilities that were actually furnished or services that were
9 actually performed. The payment must be reasonably related to the value of the goods or
10 facilities that were actually furnished or services that were actually performed.

11 (18) A lender may not charge a borrower points and fees in connection with a high-cost
12 home loan if the proceeds of the high-cost home loan are used to refinance an existing
13 high-cost home loan held by the lender or an affiliate of the lender.

14 (19) Notwithstanding ORS 708A.255, a lender may not make a high-cost home loan that
15 requires a penalty or premium for the prepayment of the balance of the indebtedness.

16 **SECTION 5.** (1) A lender or mortgage broker must deliver, mail, fax or electronically
17 transmit the following notice in at least 12-point type to the borrower at the time the bor-
18 rower applies for a high-cost home loan:

20
21 **NOTICE TO BORROWER**

22 You should consider financial counseling prior to executing loan documents. The enclosed
23 list of consumer credit counselors is provided by the Department of Consumer and Business
24 Services.

26
27 (2) In the event of a telephone application, the notice described in subsection (1) of this
28 section must be provided immediately after receipt of the telephone application. The notice
29 shall be separate from any loan application documents. In order to provide the notice or loan
30 documents using an electronic transmission, the lender or mortgage broker must first obtain
31 written or electronically transmitted permission from the borrower.

32 (3) The Department of Consumer and Business Services shall prepare and make available
33 a list of consumer credit counselors qualified to advise borrowers with respect to high-cost
34 home loans. The lender or mortgage broker shall provide the list of consumer credit coun-
35 selors to the borrower at the time that the notice described in subsection (1) of this section
36 is given.

37 **SECTION 6.** (1) A lender or mortgage broker may not make or arrange a high-cost home
38 loan unless the lender or mortgage broker has given the following notice in writing to the
39 borrower within three days after determining that the loan is a high-cost home loan, but no
40 later than 10 days before the closing date of the loan:

42
43 **CONSUMER CAUTION AND**
44 **HOME OWNERSHIP COUNSELING NOTICE**
45

1 If you obtain this loan, which under Oregon law is a high-cost home loan, the lender will have
 2 a mortgage on your home. You could lose your home, and any money you have put into it,
 3 if you do not meet your obligations under the loan.

4
 5 You should shop around and compare loan rates and fees. Mortgage loan rates and closing
 6 costs and fees vary based on many factors, including your particular credit and financial
 7 circumstances, your earnings history, the loan-to-value requested and the type of property
 8 that will secure your loan. The loan rate and fees could vary based on which lender or
 9 mortgage broker you select. Higher rates and fees may be related to the individual circum-
 10 stances of a particular consumer's application.

11
 12 You should consider consulting a qualified consumer credit counselor or other experienced
 13 financial adviser regarding the rate, fees and provisions of this mortgage loan before you
 14 proceed.

15
 16 You are not required to complete any loan agreement merely because you have received
 17 these disclosures or have signed a loan application.

18
 19 If you proceed with this mortgage loan, you should also remember that you may face serious
 20 financial risks if you use this loan to pay off credit card debts and other debts in connection
 21 with this transaction and then subsequently incur significant new credit card charges or
 22 other debts. If you continue to accumulate debt after this loan is closed and then experience
 23 financial difficulties, you could lose your home and any equity you have in it if you do not
 24 meet your mortgage loan obligations.

25
 26 Property taxes and homeowner's insurance are your responsibility. Not all lenders provide
 27 escrow services for these payments. You should ask your lender about these services.

28
 29 Your payments on existing debts contribute to your credit ratings. You should not accept
 30 any advice to ignore your regular payments to your existing creditors. Accordingly, it is
 31 important that you make regular payments to your existing creditors.

32
 33
 34 (2) Documents creating a high-cost home loan must state that the mortgage is a high-
 35 cost home loan subject to sections 2 to 10 of this 2007 Act. The statement must be printed
 36 in at least 12-point type on top of the first page of the mortgage documents.

37 **SECTION 7.** (1) If a lender makes a high-cost home loan subject to sections 2 to 10 of this
 38 2007 Act, the lender shall report both the favorable and unfavorable payment history of the
 39 borrower to a nationally recognized consumer reporting agency at least once per calendar
 40 year during the period that the lender holds or services the high-cost home loan.

41 (2) Sections 2 to 10 of this 2007 Act apply to any person that in bad faith attempts to
 42 avoid the application of sections 2 to 10 of this 2007 Act by any subterfuge, including but not
 43 limited to splitting or dividing any loan transaction into separate parts for the purpose of
 44 evading the provisions of sections 2 to 10 of this 2007 Act.

45 **SECTION 8.** (1) Before filing an action to collect money due under a high-cost home loan

1 or taking steps to terminate a borrower's ownership of property that is subject to a high-cost
2 home loan, the lender or lender's assignee of the loan shall deliver to the borrower a notice
3 of the right to cure the default that informs the borrower:

4 (a) Of the nature of the default;

5 (b) Of the borrower's right to cure the default by paying the sum of money required;

6 (c) Of the date by which the borrower may cure the default to avoid a court action, an
7 acceleration or the taking of steps to terminate the borrower's ownership of the property;

8 (d) That if the borrower does not cure the default by the date specified, the lender or
9 assignee may file an action for money due or take steps to terminate the borrower's own-
10 ership of the property; and

11 (e) Of the name, address and telephone number of a person the borrower may contact if
12 the borrower disagrees that a default has occurred or disagrees with the correctness of the
13 calculation of the amount required to cure the default.

14 (2) The date by which the borrower may cure the default may not be less than 30 days
15 after the date the notice is delivered. If the amount necessary to cure the default will
16 change within 30 days after the date the notice is delivered, the notice shall give sufficient
17 information to enable the borrower to calculate the amount at any point within the 30-day
18 period.

19 (3) If a lender or assignee asserts that a borrower has failed to abide by the material
20 terms of the loan and accelerates payments, the borrower or anyone authorized to act on
21 the borrower's behalf may, at any time prior to the termination of the borrower's ownership
22 of the property, cure the default and reinstate the high-cost home loan. Cure of the default
23 reinstates the borrower to the same position as if the default had not occurred and nullifies,
24 as of the date of the cure, any acceleration of an obligation under the loan.

25 (4) Except as provided in this subsection, a borrower may not be required to pay any
26 charge, fee or penalty to exercise the right to cure a default. The borrower is not liable for
27 any attorney fees relating to the default that are incurred by the lender or assignee prior
28 to or during the period for curing the default or for attorney fees in excess of \$100 that are
29 incurred by the lender or assignee after the expiration of the 30-day period but prior to the
30 time the lender or assignee files an action or takes other action to terminate the borrower's
31 ownership of the property. The borrower is liable for the reasonable attorney fees actually
32 incurred by the lender or assignee after the creditor or assignee files an action or takes
33 other action to terminate the borrower's ownership of the property.

34 (5) If a default is cured before the lender or assignee files an action or takes other action
35 to terminate the borrower's ownership of the property, the creditor or assignee may not in-
36 stitute an action or take other action to terminate ownership based upon that default. If a
37 default is cured after the initiation of any action, the lender or assignee shall take the steps
38 necessary to terminate the action.

39 **SECTION 9.** (1) Except as provided in subsection (2) of this section, a lender employs an
40 unconscionable tactic under ORS 646.607 if the lender violates any provision of sections 4 to
41 8 of this 2007 Act.

42 (2) If a lender making a high-cost home loan fails to comply with the provisions of
43 sections 4 to 8 of this 2007 Act and the lender is acting in good faith, the lender is not con-
44 sidered to have violated a provision of sections 4 to 8 of this 2007 Act if:

45 (a) Within 30 days after the loan closing date and prior to the institution of any action

1 under section 10 of this 2007 Act, the lender:

2 (A) Notifies the borrower of the compliance failure;

3 (B) Makes appropriate restitution to the borrower; and

4 (C) Adjusts the terms of the loan in a manner beneficial to the borrower so that the loan,
5 at the choice of the borrower, satisfies the requirements of sections 2 to 10 of this 2007 Act
6 or is no longer a high-cost home loan subject to the provisions of sections 2 to 10 of this 2007
7 Act; or

8 (b) Within 60 days after the loan closing date and prior to the institution of any action
9 under section 10 of this 2007 Act or receipt of written notice of the compliance failure, the
10 lender:

11 (A) Notifies the borrower of the compliance failure;

12 (B) Makes appropriate restitution to the borrower;

13 (C) Adjusts the terms of the loan in a manner beneficial to the borrower so that the loan,
14 at the choice of the borrower, satisfies the requirements of sections 2 to 10 of this 2007 Act
15 or is no longer a high-cost home loan subject to the provisions of sections 2 to 10 of this 2007
16 Act; and

17 (D) Can show that the compliance failure resulted from a bona fide error made despite
18 maintenance of procedures reasonably intended to prevent the type of error.

19 **SECTION 10.** (1) Any party to a high-cost home loan that is damaged by a violation of
20 any provision of sections 4 to 8 of this 2007 Act may bring a civil action to recover damages
21 as described in this section.

22 (2) Upon commencement of an action brought under this section, the party bringing the
23 action shall mail a copy of the complaint or other initial pleading to the Attorney General
24 and, upon entry of a judgment or decree in the action, shall mail a copy of the judgment or
25 decree to the Attorney General. Failure to mail a copy of the complaint is not a jurisdictional
26 defect, but a judgment may not be entered for the plaintiff until proof of mailing is filed with
27 the court. Proof of mailing may be by affidavit or by return receipt of mailing.

28 (3) Except as provided in subsection (4) of this section, any person found to have violated
29 any provision of sections 4 to 8 of this 2007 Act shall be liable to the borrower for:

30 (a) Actual damages; and

31 (b) An amount equal to all of the interest, earned or unearned, points and fees and
32 closing costs paid on the loan.

33 (4) Any person found to have violated section 4 (11) or (13) of this 2007 Act shall be liable
34 to the borrower for \$5,000 per violation or twice the amount of points and fees and closing
35 costs, whichever is greater.

36 (5) A court may award reasonable attorney fees to a prevailing plaintiff.

37 (6) A plaintiff may be granted injunctive, declaratory and such other equitable relief as
38 the court deems appropriate in an action to enforce compliance with sections 4 to 8 of this
39 2007 Act.

40 (7) A permanent injunction or final judgment or order of the court based on a violation
41 of any provision of sections 4 to 8 of this 2007 Act and made under ORS 646.632 or 646.636
42 shall be prima facie evidence in an action brought under this section that the defendant vi-
43 olated sections 4 to 8 of this 2007 Act. An assurance of voluntary compliance, whether or not
44 approved by the court, is not evidence of a violation.

45 (8) Upon a finding by a court of an intentional violation by a lender of any provision of

1 sections 4 to 8 of this 2007 Act, the home loan agreement shall be rendered void and the
2 lender shall have no right to collect, receive or retain any principal, interest or other charges
3 with respect to the loan. The borrower may recover any payments made under the agree-
4 ment.

5 (9) Upon a finding by a court that a high-cost home loan violates any provision of
6 sections 4 to 8 of this 2007 Act, whether the violation is raised as an affirmative claim or as
7 a defense, the loan transaction may be rescinded. The remedy of rescission shall be available
8 without time limitation.

9 (10) The remedies provided in this section are not intended to be the exclusive remedies
10 available to a borrower of a high-cost home loan.

11 (11) An action against a lender or mortgage broker under this section must be com-
12 menced within six years of origination of the high-cost home loan. When a complaint is filed
13 by a prosecuting attorney to prevent, restrain or punish violation of any provision of sections
14 4 to 8 of this 2007 Act, running of the statute of limitations with respect to a private right
15 of action under this section and based in whole or in part on a matter complained of in the
16 proceeding shall be suspended during the pendency of the proceeding.

17 **SECTION 11.** Section 12 of this 2007 Act is added to and made a part of ORS chapter 88.

18 **SECTION 12.** (1) Any complaint served in a suit initiated under this chapter and relating
19 to a high-cost home loan, as defined in section 2 of this 2007 Act, must contain an affirmative
20 allegation that the plaintiff has complied with the provisions of sections 4 to 8 of this 2007
21 Act. The allegation must be proven to the satisfaction of the court before entry of judgment
22 by default or otherwise.

23 (2) It is a defense to an action to foreclose a mortgage that the high-cost home loan, as
24 defined in section 2 of this 2007 Act, violates any provision of sections 4 to 8 of this 2007 Act.

25 (3) In any action by an assignee to enforce a high-cost home loan, as defined in section
26 2 of this 2007 Act, against a borrower in default more than 60 days or in foreclosure, the
27 borrower may assert any claims in recoupment and defenses to payment under sections 4 to
28 8 of this 2007 Act with respect to the loan, without time limitations, that the borrower could
29 assert against the original lender of the loan.

30 **SECTION 13.** Sections 2 to 12 of this 2007 Act and the amendments to ORS 82.025 and
31 708A.255 by sections 15 and 16 of this 2007 Act become operative on January 1, 2008.

32 **SECTION 14.** The Director of the Department of Consumer and Business Services may
33 take any action under sections 2 to 12 of this 2007 Act and the amendments to ORS 82.025
34 and 708A.255 by sections 15 and 16 of this 2007 Act prior to the operative date of sections 2
35 to 12 of this 2007 Act and the amendments to ORS 82.025 and 708A.255 by sections 15 and 16
36 of this 2007 Act that is necessary to enable the director to exercise, on and after the opera-
37 tive date of sections 2 to 12 of this 2007 Act and the amendments to ORS 82.025 and 708A.255
38 by sections 15 and 16 of this 2007 Act, all the duties, functions and powers conferred on the
39 director by sections 2 to 12 of this 2007 Act and the amendments to ORS 82.025 and 708A.255
40 by sections 15 and 16 of this 2007 Act.

41 **SECTION 15.** ORS 82.025 is amended to read:

42 82.025. ORS 82.010 (3) and (4) and 82.020 do not apply to:

43 (1) Any financial institution or trust company, as those terms are defined in ORS 706.008, any
44 consumer finance licensee under ORS chapter 725, or any pawnbroker licensed under ORS chapter
45 726.

1 (2) Any lender approved by the Secretary of Housing and Urban Development of the United
 2 States for participation in any mortgage insurance program under the National Housing Act (12
 3 U.S.C. 1701 et seq.).

4 (3) Any loan secured by a first lien on real property or made to finance the acquisition of real
 5 property and secured by any lien on that property.

6 (4) Any loan which is secured by real property, which is scheduled under the loan agreement
 7 to be repaid in substantially equal payments and which is made by a lender described in this sub-
 8 section. A lender under this subsection is one who makes, invests in or arranges real property loans,
 9 including loans secured by first liens on residential manufactured homes, aggregating more than \$1
 10 million per year. Under this subsection, payments shall be “substantially equal” if, under the terms
 11 of the loan agreement, no single scheduled payment is more than twice the amount of any other
 12 scheduled payment.

13 (5) Any loan wholly or partially secured or covered by guarantees or insurance by the Federal
 14 Housing Administration, the United States Department of Veterans Affairs or the Farmers Home
 15 Administration of the United States, any department, bureau, board, commission or agency of the
 16 United States, or any corporation wholly owned, directly or indirectly by the United States.

17 (6) Any loan permitted under applicable federal law and regulations from a tax qualified retire-
 18 ment plan to a person then a participant under the plan.

19 (7) Any bona fide sale or resale of securities or commercial paper.

20 (8) Any interest charge by broker-dealers registered under the Securities Exchange Act of 1934
 21 for carrying a debit balance in an account for a customer if the debit balance is payable on demand
 22 and secured by stocks or bonds.

23 **(9) Any high-cost home loan, as defined in section 2 of this 2007 Act.**

24 **SECTION 16.** ORS 708A.255 is amended to read:

25 708A.255. (1) Except as otherwise provided in this section **or sections 4 to 8 of this 2007 Act**,
 26 there is no limitation on the rate of interest or on the amount of other charges that a financial in-
 27 stitution may contract for and receive for a loan or use of money.

28 (2) If a loan made by a financial institution is repaid before maturity, the unearned portion of
 29 the charges, if any, shall be refunded or credited to the borrower as provided in this subsection. The
 30 amount of the refund shall not be less than the total interest contracted for to maturity, less the
 31 greater of:

32 (a) Ten percent of the amount financed, or \$75, whichever is less; or

33 (b) The interest earned to the installment due date nearest the date of prepayment, computed
 34 by applying the simple interest rate of the loan to the actual principal balances outstanding, for the
 35 periods of time the balances were actually outstanding. For purposes of rebate computations under
 36 this paragraph, the installment due date preceding the date of prepayment shall be considered to
 37 be nearest if prepayment occurs 15 days or less after that installment date. If prepayment occurs
 38 more than 15 days after the preceding installment due date, the next succeeding installment due date
 39 shall be considered to be nearest the date of prepayment. In determining the simple interest rate,
 40 the lender may apply to the scheduled payments the actuarial method, by which each scheduled
 41 payment is applied first to accrued and unpaid interest and any amount remaining is applied to re-
 42 duction of the principal balance.

43 (3) Any installment of an installment loan or payment under an open-end credit arrangement
 44 that is not paid when due shall continue to bear interest until paid. In addition, if the installment
 45 or payment is not paid when due, the installment or payment may bear a late charge in such amount

1 as is agreed to by the lender and the borrower. However, except for loans secured by real property,
2 the lender may impose a late charge only if:

3 (a) The installment or payment is not received by the lender within 10 days after the due date
4 or, if the open-end credit arrangement is a credit card account, the payment is not received by the
5 lender on or before the due date;

6 (b) The loan agreement or open-end credit arrangement provides for a late charge upon delin-
7 quent installments or payments; and

8 (c) A monthly billing, coupon or notice is provided by the lender disclosing the date on which
9 installments or payments are due and that a late charge may be imposed if payment is not received
10 by the lender within 10 days thereafter or, in the case of an open-end credit arrangement that is a
11 credit card account, that a late charge may be imposed if payment is not received by the lender on
12 or before the date on which the payment is due. However, if the lender and the borrower have
13 provided in the note or other written loan agreement that the payments on the loan shall be made
14 by the means of automatic deductions from a deposit account maintained by the borrower, the lender
15 shall not be required to provide the borrower with a monthly billing, coupon or notice under this
16 paragraph with respect to any occasion on which there are insufficient funds in the borrower's ac-
17 count to cover the amount of a loan payment on the date the loan payment becomes due and within
18 the periods described in paragraph (a) of this subsection.

19 **SECTION 17. Sections 2 to 12 of this 2007 Act and the amendments to ORS 82.025 and**
20 **708A.255 by sections 15 and 16 of this 2007 Act apply to loans for which application is first**
21 **made on or after the operative date of sections 2 to 12 of this 2007 Act and the amendments**
22 **to ORS 82.025 and 708A.255 by sections 15 and 16 of this 2007 Act.**

23 **SECTION 18. This 2007 Act being necessary for the immediate preservation of the public**
24 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
25 **on its passage.**

26
