

## HOUSE AMENDMENTS TO HOUSE BILL 3603

By COMMITTEE ON ELECTIONS, ETHICS AND RULES

February 20

1 On page 1 of the printed bill, line 2, delete “59.860, 59.969,”.

2 In line 3, delete “59.971, 59.973 and 59.996” and insert “59.850, 59.880 and 706.544”.

3 Delete lines 5 through 26 and delete pages 2 through 5 and insert:

### “SHORT TITLE

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7 “SECTION 1. Sections 1 to 8 of this 2008 Act shall be known and may be cited as the  
8 Responsible Mortgage Lending Act.

### “DEFINITIONS

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12 “SECTION 2. As used in sections 2 to 4 of this 2008 Act:

13 “(1) ‘Annual percentage rate’ means the annual percentage rate defined in and calculated  
14 according to the federal Truth in Lending Act, 15 U.S.C. 1601 et seq., and regulations adopted  
15 thereunder.

16 “(2)(a) ‘Lender’ means:

17 “(A) A mortgage banker or mortgage broker, as those terms are defined in ORS 59.840;

18 “(B) A person licensed under the provisions of ORS chapter 725;

19 “(C) A credit union, as defined in ORS 723.006;

20 “(D) A banking institution, as defined in ORS 706.008; or

21 “(E) A state bank, as defined in ORS 706.008.

22 “(b) ‘Lender’ does not include:

23 “(A) A federal bank or a national bank, as those terms are defined in ORS 706.008, or an  
24 operating subsidiary of a federal bank or a national bank;

25 “(B) A federal credit union or an operating subsidiary of a federal credit union; or

26 “(C) A financial institution subject to exclusive regulation or supervision by a federal  
27 agency.

28 “(3)(a) ‘Mortgage’ means a debt that is secured by a mortgage or a trust deed on real  
29 property in this state upon which is or will be located a structure or structures intended for  
30 occupancy by one to four families and by the borrower as a principal residence.

31 “(b) ‘Mortgage’ does not include:

32 “(A) A debt incurred to finance the construction of a residential dwelling on real property  
33 in this state; or

34 “(B) A debt the borrower incurs that is secured by real property the borrower owns, but  
35 for which repayment is not due until the borrower dies, sells the property or no longer uses

1 the property as a primary residence.

2 “(4) ‘Mortgage agreement’ means the contract, promissory note, trust deed or other ev-  
3 idence of security and all related agreements, documents and understandings that specify the  
4 terms under which the borrower is obligated to repay the mortgage and that form the basis  
5 for the lender’s and borrower’s legal duties in connection with the mortgage.

6 “(5) ‘Negative amortization’ means an increase in the principal of a mortgage that occurs  
7 because a borrower pays less than the amount of principal and interest that would be due  
8 in substantially equal regularly scheduled payments calculated to reduce the mortgage  
9 amount to zero in a period of time specified in the mortgage agreement.

10 “(6) ‘Nontraditional mortgage’ means a debt that is secured by a mortgage or trust deed  
11 on real property in this state, upon which is or will be located a structure or structures in-  
12 tended for occupancy by one to four families and by the borrower as a principal residence,  
13 and that is:

14 “(a) A mortgage on which, for a period of time specified in the mortgage agreement, a  
15 borrower may pay in a regularly scheduled payment only the interest due, or an interest-only  
16 mortgage that the Director of the Department of Consumer and Business Services identifies  
17 by rule as a nontraditional mortgage;

18 “(b) A payment option adjustable rate mortgage; or

19 “(c) A mortgage that the director identifies by rule as a nontraditional mortgage and:

20 “(A) That allows for negative amortization;

21 “(B) That features an introductory interest rate; or

22 “(C) For which the lender qualifies the borrower with reduced documentation.

23 “(7) ‘Payment option adjustable rate mortgage’ means a mortgage that allows the bor-  
24 rower, during any period in which a regularly scheduled payment is due, to pay one of a  
25 number of optional amounts, including but not limited to:

26 “(a) A minimum payment that is less than the interest accruing on the mortgage and  
27 that results in negative amortization;

28 “(b) An interest-only payment that does not contribute toward amortizing the mortgage  
29 principal but that does not result in negative amortization because the lender requires the  
30 borrower, after a specified period of time or at the point at which the mortgage principal  
31 reaches a specified negative amortization cap, to make payments that will fully amortize the  
32 outstanding mortgage balance over the remaining term of the mortgage; or

33 “(c) A payment of principal and interest that will fully amortize the amount of the  
34 mortgage.

35 “(8) ‘Subprime mortgage’ means a mortgage the director identifies by rule as a subprime  
36 mortgage and for which the annual percentage rate, exclusive of any discount points a bor-  
37 rower pays, differs from the yield on securities of comparable maturity issued by the United  
38 States Treasury by:

39 “(a) Three or more percentage points for first-lien mortgages, except first-lien mortgages  
40 secured by a manufactured dwelling, as defined in ORS 446.003, in which case the difference  
41 is 3.5 percentage points or more; or

42 “(b) Five or more percentage points for subordinate-lien mortgages, except subordinate-  
43 lien mortgages secured by a manufactured dwelling, as defined in ORS 446.003, in which case  
44 the difference is 5.5 percentage points or more.

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3 **“PREPAYMENT**

4 **“SECTION 3. (1) The terms of a subprime mortgage or nontraditional mortgage that a**  
5 **lender offers or originates may impose a prepayment penalty for a full or partial repayment**  
6 **of principal made within two years after the closing date for the mortgage or during a period**  
7 **that ends 60 days before the first scheduled adjustment of the interest rate applicable to the**  
8 **mortgage, whichever date occurs first. Any terms in a mortgage agreement that impose a**  
9 **penalty for a prepayment in circumstances other than those described in this section are**  
10 **void and unenforceable.**

11 **“(2) This section does not apply to a mortgage offered or originated under a federal pro-**  
12 **gram that requires the mortgage agreement to include a prepayment penalty.**

13 **“REQUIRED DISCLOSURES**

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15 **“SECTION 4. (1) At the time a lender must provide a borrower with a good faith estimate**  
16 **under the provisions of the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2604,**  
17 **a lender that offers or originates a subprime mortgage or nontraditional mortgage shall**  
18 **disclose to the borrower in nontechnical language:**

19 **“(a) The amount of the initial payment for the mortgage;**

20 **“(b) The annual percentage rate applicable to the mortgage;**

21 **“(c) The interest rate applicable to the mortgage and whether the interest rate is subject**  
22 **to change;**

23 **“(d) The amount of the highest potential regularly scheduled payment for the mortgage**  
24 **and the date on which or by which the payment may reach the highest potential amount, to**  
25 **the extent that the highest potential regularly scheduled payment can be calculated for the**  
26 **mortgage;**

27 **“(e) The amount of any compensation or payment made under the mortgage agreement**  
28 **to a person that originates, negotiates or brokers the mortgage;**

29 **“(f) The amount and timing of any rate adjustments that might occur under the mort-**  
30 **gage agreement; and**

31 **“(g) Such other information as the Director of the Department of Consumer and Busi-**  
32 **ness Services may require by rule.**

33 **“(2) The director by rule may prescribe the form and contents of the disclosures required**  
34 **under this section.**

35 **“(3) If the amounts, rates or information disclosed under subsection (1) of this section**  
36 **change, the lender, at least three days before the mortgage closes, shall provide the borrower**  
37 **with:**

38 **“(a) A new disclosure in substantially the same form as the disclosure required under**  
39 **subsection (1) of this section that shows the new amounts, rates and information that will**  
40 **apply to the subprime mortgage or nontraditional mortgage that the lender is entering into**  
41 **with the borrower;**

42 **“(b) The differences between the amounts, rates and information disclosed under sub-**  
43 **section (1) of this section and the amounts, rates and information disclosed under this sub-**  
44 **section; and**

45 **“(c) A statement of reasons for the changes.**



1 violation, provided that in the case of a continuing violation, each day's continuance is a  
2 separate violation, but the maximum penalty for a continuing violation may not exceed  
3 \$20,000; or

4 “(b) Bring suit in the name and on behalf of the State of Oregon in the circuit court of  
5 any county to enjoin the violation and to enforce sections 2 to 4 of this 2008 Act or any rule  
6 adopted or order issued thereunder.

7 “(2) Upon application supported by a proper showing, a court shall grant a permanent  
8 or temporary injunction, restraining order or writ of mandamus to prevent a person from  
9 violating sections 2 to 4 of this 2008 Act, a rule adopted under section 5 of this 2008 Act or  
10 an order of the director to enforce a provision of sections 2 to 4 of this 2008 Act.

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

17 “(4) If the court finds that a defendant has violated any provision of sections 2 to 4 of  
18 this 2008 Act, a rule adopted under section 5 of this 2008 Act or an order of the director to  
19 enforce a provision of sections 2 to 4 of this 2008 Act, the court may appoint the director or  
20 another person as a receiver for the defendant or the defendant's assets. The court may not  
21 require the director to post a bond. The court may award reasonable attorney fees to the  
22 director if the director prevails in an action under this section. The court may award rea-  
23 sonable attorney fees to a defendant who prevails in an action under this section if the court  
24 determines that the director had no objectively reasonable basis for asserting the claim or  
25 no reasonable basis for appealing an adverse decision of the trial court.

26 “(5) The director may include in any action authorized by this section:

27 “(a) A claim for restitution or damages on behalf of a person injured by the act or  
28 practice constituting the subject matter of the action. The court has jurisdiction to award  
29 appropriate relief to the person if the court finds that enforcement of the rights of the per-  
30 son by private civil action, whether by class action or otherwise, would be so burdensome  
31 or expensive as to be impractical.

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

35 “SECTION 8. (1) Except as provided in ORS 183.745, the Director of the Department of  
36 Consumer and Business Services, upon entering an order to enforce a provision of sections  
37 2 to 4 of this 2008 Act, shall promptly give appropriate notice of the order as provided in this  
38 subsection. The notice shall state that a hearing will be held on the order if a written demand  
39 for hearing is filed with the director within 20 days after the date of service of the order.  
40 The director shall give notice regarding an order entered under section 7 of this 2008 Act to  
41 all interested persons.

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

45 “(3) After the hearing, the director shall enter a final order vacating, modifying or af-

1 **firming the director's previous order.**

2 **"SECTION 9.** ORS 59.850 is amended to read:

3 "59.850. (1) The Director of the Department of Consumer and Business Services by rule shall  
4 establish procedures for licensing mortgage bankers or mortgage brokers. The director may coordi-  
5 nate licensing with any national registration or licensing system.

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

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

16 "(4) Every applicant for a license as a mortgage banker or mortgage broker shall file with the  
17 director a corporate surety bond or irrevocable letter of credit issued by an insured institution as  
18 defined in ORS 706.008 as the director may approve by rule running to the State of Oregon in a sum  
19 to be determined by the director by rule.

20 "(5) The total amount of the corporate surety bond or irrevocable letter of credit for a single  
21 applicant under subsection (4) of this section shall be not less than \$25,000 but not more than  
22 \$50,000, regardless of the number of offices of the applicant. If an applicant has more than one office  
23 in this state to engage in residential mortgage transactions as a mortgage banker or mortgage bro-  
24 ker, the amount of the bond or letter of credit shall increase for each additional office in an amount  
25 determined by the director by rule. The amount of the increase in the bond or letter of credit for  
26 each additional office shall be not less than \$5,000 but not more than \$10,000. The director may  
27 adjust the minimum amount of the increase in the bond or letter of credit for additional offices as  
28 necessary to comply with the \$50,000 limit.

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

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

36 "(8) The director shall:

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

38 "(b) Set by rule all fees required under this section. Fees shall be set to reflect those amounts  
39 sufficient to meet the costs of administering ORS 59.840 to 59.980 **and sections 2 to 4 of this 2008**  
40 **Act**, including those amounts sufficient to establish and maintain a reasonable emergency fund; and

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

43 "(9) The fees under this section are not refundable except for those fees that the director de-  
44 termines by rule may be refundable.

45 **"SECTION 10.** ORS 59.880 is amended to read:

1 “59.880. The Director of the Department of Consumer and Business Services shall have general  
2 supervision and control over all loan originators, mortgage bankers and mortgage brokers residing  
3 or doing business in this state and engaged in any activity subject to the provisions of ORS 59.840  
4 to 59.980 **and sections 2 to 4 of this 2008 Act**. All such persons and their records and everything  
5 connected with their activities shall be subject to examination by the director at any time. The  
6 provisions of this section and of any other section of ORS 59.840 to 59.980 **and sections 2 to 4 of**  
7 **this 2008 Act** relating to examinations shall extend to any person who should have been reported  
8 as a loan originator under ORS 59.969 or licensed as a mortgage banker or mortgage broker, any  
9 person exempted by rule from those definitions or any person whose license has expired or has been  
10 withdrawn, canceled, suspended, conditioned or revoked. The director may collect from each such  
11 person the actual expenses incurred in that examination.

12 “**SECTION 11.** ORS 706.544 is amended to read:

13 “706.544. A banking institution or a non-Oregon institution shall pay to the Director of the De-  
14 partment of Consumer and Business Services the actual costs of the Department of Consumer and  
15 Business Services, as determined by the director, for conducting any special examination or taking  
16 any action under ORS 706.600 **or under sections 2 to 4 of this 2008 Act**.

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18 “**APPLICABILITY AND OPERATIVE DATE**

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20 “**SECTION 12.** (1) **Section 4 of this 2008 Act and the amendments to ORS 59.850 by section**  
21 **9 of this 2008 Act apply to subprime mortgages and nontraditional mortgages originated on**  
22 **or after the operative date set forth in section 13 of this 2008 Act.**

23 “(2) **Sections 2, 3 and 5 to 8 of this 2008 Act and the amendments to ORS 59.880 and**  
24 **706.544 by sections 10 and 11 of this 2008 Act apply to subprime mortgages and nontraditional**  
25 **mortgages originated on or after the effective date of this 2008 Act.**

26 “**SECTION 13.** (1) **Section 4 of this 2008 Act and the amendments to ORS 59.850 by section**  
27 **9 of this 2008 Act become operative 120 days following the effective date of this 2008 Act.**

28 “(2) **The Director of the Department of Consumer and Business Services may take any**  
29 **action before the operative date set forth in subsection (1) of this section that is necessary**  
30 **to enable the director to exercise, on and after the operative date, all the duties, functions**  
31 **and powers conferred on the director by section 4 of this 2008 Act and the amendments to**  
32 **ORS 59.850 by section 9 of this 2008 Act.**

33  
34 “**CAPTIONS**

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36 “**SECTION 14.** **The unit captions used in this 2008 Act are provided only for the conven-**  
37 **ience of the reader and do not become part of the statutory law of this state or express any**  
38 **legislative intent in the enactment of this 2008 Act.**

39  
40 “**EMERGENCY CLAUSE**

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42 “**SECTION 15.** **This 2008 Act being necessary for the immediate preservation of the public**  
43 **peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect**  
44 **on its passage.”**