

House Bill 3603

Sponsored by COMMITTEE ON ELECTIONS, ETHICS AND RULES (at the request of House Interim Committee on Elections, Ethics and Rules)

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 banker and mortgage broker to file report concerning residential mortgage lending activities by May 1 of each year. Punishes failure to file report with fine of \$100 per day.

Specifies contents of and retention requirements for registry of loan originators.

Permits Director of Department of Consumer and Business Services to suspend or bar loan originator from employment for violating statute or rule or order of director.

Prohibits loan originator from performing act as loan originator in negligent or incompetent manner. Prohibits mortgage banker or mortgage broker from employing person as loan originator if person is suspended or prohibited from employment as loan originator or if employment violates condition or order of director, state or federal agency or court.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to loans secured by real estate; creating new provisions; amending ORS 59.860, 59.969,
3 59.971, 59.973 and 59.996; and declaring an emergency.

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

5 **SECTION 1.** ORS 59.860 is amended to read:

6 59.860. (1) Every mortgage banker and mortgage broker shall make and keep such accounts,
7 correspondence, memoranda, papers, books and other records as the Director of the Department of
8 Consumer and Business Services by rule or order prescribes. All such records shall be preserved for
9 five years unless the director by rule prescribes otherwise. The director may examine all such re-
10 cords within or without this state at any reasonable time or times and may require without
11 subpoena the production of such records at the office of the director as often as is reasonably nec-
12 essary.

13 (2) Every mortgage banker and mortgage broker shall file financial reports or other information
14 as the director by rule or order may require and shall promptly correct any document filed with the
15 director that is or becomes incomplete or inaccurate in any material respect.

16 (3) **On or before May 1 of each year or on a date the director establishes by rule, every**
17 **mortgage banker and mortgage broker shall file a report with the director in a form pre-**
18 **scribed by the director. The report shall contain information the director requires concern-**
19 **ing the mortgage banker's or mortgage broker's business and operations related to**
20 **residential mortgage lending during the preceding calendar year. The information shall in-**
21 **clude the number and nature of loans originated by loan originators that the mortgage**
22 **banker or mortgage broker employed.**

23 (4) **The report and any records submitted to the director under this section are exempt**
24 **from disclosure or production and are confidential as provided under ORS 705.137.**

25 (5) **Notwithstanding the exemption and confidentiality provisions of subsection (4) of this**
26 **section, the director may abstract information contained in reports submitted under sub-**

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 **section (3) of this section and may make the abstracted information available for public in-**
 2 **spection provided that the abstracted information does not identify a particular mortgage**
 3 **banker or mortgage broker as a source of the information.**

4 **SECTION 2.** ORS 59.969 is amended to read:

5 59.969. (1) A mortgage banker or mortgage broker must provide to the Director of the Depart-
 6 ment of Consumer and Business Services, and keep current, a list of loan originators employed by
 7 the banker or broker. The banker or broker shall notify the director within 30 days of the employ-
 8 ment or termination of employment of a loan originator.

9 (2) *[An applicant for issuance of]* **A person that applies for a license to conduct business as**
 10 **a mortgage banker or mortgage broker** *[license]* under ORS 59.850 **or that applies to renew a li-**
 11 **cence under ORS 59.855** shall include with the application evidence acceptable to the director that
 12 each individual the *[applicant]* **person** has hired or intends to hire as a loan originator has:

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

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

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

19 *[(3) A mortgage banker or mortgage broker that applies for renewal of a license pursuant to ORS*
 20 *59.855 shall include with the application evidence acceptable to the director that each individual em-*
 21 *ployed by the banker or broker as a loan originator has:]*

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

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

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

28 *[(4)]* **(3)** *[An applicant for issuance of]* **A person that applies for a license to conduct business**
 29 **as a mortgage banker or mortgage broker** *[license]* under ORS 59.850 **or that applies to renew a**
 30 **license under ORS 59.855** shall include with the application evidence acceptable to the director
 31 that each individual the *[applicant]* **person** has hired or intends to hire who is an insurance pro-
 32 ducer or insurance consultant licensed under ORS 744.002 and who is a full-time loan originator as
 33 defined in ORS 59.970 has:

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

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

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

40 *[(5) A mortgage banker or mortgage broker that applies for renewal of a license pursuant to ORS*
 41 *59.855 shall include with the application evidence acceptable to the director that each individual em-*
 42 *ployed by the mortgage banker or mortgage broker as a loan originator who is an insurance producer*
 43 *or insurance consultant licensed under ORS 744.002 and who is a full-time loan originator as defined*
 44 *in ORS 59.970 has:]*

45 *[(a)(A) Successfully completed an entry-level training course approved or provided by an organ-*

1 *ization certified by the director as described in ORS 59.977; and]*

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

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

6 **[(6)] (4)** An applicant under subsection (2)[,] **or** (3)[, (4) or (5)] of this section shall, at the time
 7 of application, certify that the applicant has conducted criminal records checks required under ORS
 8 59.970 and 59.972 and:

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

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

14 **[(7)] (5)** Except as provided in *[subsections (4) and (5)]* **subsection (3)** of this section, a mortgage
 15 banker or mortgage broker may voluntarily report to the director regarding employees who would
 16 qualify as loan originators if not exempted under ORS 59.840 (4). Voluntary reporting by a banker
 17 or broker under this subsection does not make the reported employees subject to training, exam-
 18 ination or continuing education requirements or other laws governing loan originators.

19 **(6) The director shall keep for not less than 10 years, and shall maintain a registry of**
 20 **loan originators with information derived from, records of:**

21 **(a) Notifications filed under subsection (1) of this section;**

22 **(b) Exceptions to certifications under subsection (4)(b) of this section;**

23 **(c) Complaints the director has determined are justified under ORS 59.973; and**

24 **(d) Actions taken in accordance with the provisions of ORS 59.973.**

25 *[(8) The director shall keep records that include notifications filed under subsection (1) of this*
 26 *section and exceptions to certifications under subsection (6) of this section. The director shall retain*
 27 *the records for a period of not less than three years. The director shall keep for 10 years a record of*
 28 *any complaint against a loan originator that has been determined to be justified pursuant to ORS*
 29 *59.973.]*

30 **[(9)] (7)** Notwithstanding subsections (1) to **[(5)] (3)** of this section and ORS 59.865 (17), 59.970,
 31 59.971 (1)(d) and 59.975, the director, by rule, may waive any training, examination or continuing
 32 education requirement for a loan originator for a period not to exceed six months after the indi-
 33 vidual begins or resumes employment as a loan originator.

34 **SECTION 3.** ORS 59.971 is amended to read:

35 59.971. (1) A person employed by a mortgage banker or mortgage broker as a loan originator
 36 may not:

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

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

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

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

45 **(e) Perform an act as a loan originator in a negligent or incompetent manner.**

1 (2) A person may not be employed by a mortgage banker or mortgage broker as a loan origina-
2 tor as defined in ORS 59.840 or 59.970 if:

3 (a) The person has been convicted of any crime or category of crime specified by the director
4 by rule[.];

5 (b) **The person is suspended or has been prohibited from employment as a loan originator**
6 **under ORS 59.973 (5)(c);**

7 (c) **The employment violates any conditions imposed under ORS 59.973 (5)(c); or**

8 (d) **The employment violates an order issued by the director, a state or federal agency**
9 **or a court of competent jurisdiction.**

10 **SECTION 4.** ORS 59.973 is amended to read:

11 59.973. (1) If the Director of the Department of Consumer and Business Services receives a
12 complaint against a loan originator for a violation of ORS [59.967 (2) or 59.971] **59.840 to 59.980**, the
13 director may notify the loan originator and the mortgage banker or mortgage broker employing the
14 loan originator.

15 (2) The director may investigate a complaint against a loan originator. Upon the conclusion of
16 the investigation, the director shall promptly notify the loan originator and the mortgage banker or
17 mortgage broker employing the loan originator of the director's proposed determination regarding
18 the complaint.

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

21 (4) If the director determines, after opportunity for hearing, that a complaint is justified, the
22 director shall note the complaint **and any action taken** in the records kept pursuant to ORS 59.969
23 [(8)] (6). [*For a violation of ORS 59.967 (2) or 59.971, the director may*]

24 (5) **The director, after finding that a loan originator has violated a provision of ORS**
25 **59.840 to 59.980 or a rule or order of the director, may:**

26 (a) Impose requirements for supervision and remedial education of the loan originator[.];

27 (b) Assess civil penalties against the loan originator as provided in ORS 59.996;

28 (c) **Suspend or permanently prohibit the loan originator from employment as a loan**
29 **originator or place conditions on the loan originator's employment; or**

30 (d) Refer the matter for criminal prosecution pursuant to ORS 59.992.

31 **SECTION 5.** ORS 59.996 is amended to read:

32 59.996. (1) In addition to all other penalties and enforcement provisions provided by law, any
33 person who violates or who procures, aids or abets in the violation of any provision of ORS 59.840
34 to 59.980 or any rule or order of the Director of the Department of Consumer and Business Services
35 shall be subject to a penalty of not more than \$5,000 for every violation, which shall be paid to the
36 General Fund of the State Treasury.

37 (2) **Notwithstanding subsection (1) of this section, a person who fails to submit a report**
38 **required under ORS 59.860 (3) on the date specified is subject to a penalty of not more than**
39 **\$100 per day for each day after the specified date during which the failure continues.**

40 [(2)] (3) Every violation is a separate offense and, in the case of a continuing violation, each
41 day's continuance is a separate violation, but the maximum penalty for any continuing violation
42 shall not exceed \$20,000 for each offense.

43 [(3)] (4) Civil penalties under this section shall be imposed as provided in ORS 183.745.

44 **SECTION 6.** (1) **The amendments to ORS 59.860, 59.969, 59.971, 59.973 and 59.996 by**
45 **sections 1 to 5 of this 2008 Act become operative May 1, 2008, and apply to a person licensed**

1 as a mortgage banker or mortgage broker, to a person applying to become a licensed mort-
2 gage banker or mortgage broker and to a person employed as a loan originator on or after
3 May 1, 2008.

4 (2) The Director of the Department of Consumer and Business Services may take any
5 action before the operative date set forth in subsection (1) of this section that is necessary
6 to enable the director to exercise, on and after the operative date, all the duties, functions
7 and powers conferred on the director by the amendments to ORS 59.860, 59.969, 59.971, 59.973
8 and 59.996 by sections 1 to 5 of this 2008 Act.

9 SECTION 7. This 2008 Act being necessary for the immediate preservation of the public
10 peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect
11 on its passage.

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