

Enrolled
Senate Bill 1064

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CHAPTER

AN ACT

Relating to regulation of loan originators; creating new provisions; amending ORS 59.860, 59.969, 59.971, 59.973 and 59.996; and declaring an emergency.

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

SECTION 1. ORS 59.860 is amended to read:

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

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

(3) On or before May 1 of each year or on a date the director establishes by rule, every mortgage banker and mortgage broker shall file a report with the director in a form prescribed by the director. The report shall contain information the director requires concerning the mortgage banker's or mortgage broker's business and operations related to residential mortgage lending during the preceding calendar year. The information shall include the number and nature of loans originated by loan originators that the mortgage banker or mortgage broker employed.

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

(5) Notwithstanding the exemption and confidentiality provisions of subsection (4) of this section, the director may abstract information contained in reports submitted under subsection (3) of this section and may make the abstracted information available for public inspection provided that the abstracted information does not identify a particular mortgage banker or mortgage broker as a source of the information.

SECTION 2. ORS 59.969 is amended to read:

59.969. (1) A mortgage banker or mortgage broker must provide to the Director of the Department of Consumer and Business Services, and keep current, a list of loan originators employed by

the banker or broker. The banker or broker shall notify the director within 30 days of the employment or termination of employment of a loan originator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. ORS 59.971 is amended to read:

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

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

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

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

(d) Fail to meet the training, education or continuing education requirements for loan originators.

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

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

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

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

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

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

SECTION 4. ORS 59.973 is amended to read:

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

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

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

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

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

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

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

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

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

SECTION 5. ORS 59.996 is amended to read:

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

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

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

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

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

(a) **A person that was licensed under ORS 59.840 to 59.980 before May 1, 2008, or is licensed on or after May 1, 2008, and that is conducting business as a mortgage banker or mortgage broker on or after May 1, 2008;**

(b) **A person that applies to become a licensed mortgage banker or mortgage broker on or after May 1, 2008; and**

(c) **A person that was employed as a loan originator before May 1, 2008, or that becomes employed as a loan originator on or after May 1, 2008, and whose employment continues on and after May 1, 2008.**

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

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

Passed by Senate February 22, 2008

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Secretary of Senate

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President of Senate

Passed by House February 22, 2008

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Speaker of House

Received by Governor:

.....M,....., 2008

Approved:

.....M,....., 2008

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Governor

Filed in Office of Secretary of State:

.....M,....., 2008

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Secretary of State