

A-Engrossed Senate Bill 1090

Ordered by the Senate February 13
Including Senate Amendments dated February 13

Sponsored by Senator WESTLUND (at the request of AARP Oregon, Coalition for a Livable Future, Oregon ACORN, Oregon Center for Christian Values, Oregon Hunger Relief Task Force, OSPIRG, SEIU Local 503, Oregon Center for Public Policy, Urban League of Portland) (Presession filed.)

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.

[Requires creditor to make and mortgage broker to provide services related to home loan only if creditor and mortgage broker reasonably believe that borrower can make scheduled loan payments, tax payments and insurance payments related to home loan. Sets standards for forming reasonable belief. Prohibits certain lending practices, charges and payments and requires disclosure of terms and costs of home loan. Specifies creditor's and mortgage broker's duties and standards of care with respect to borrower.]

Requires lender to ensure that subprime mortgage or nontraditional mortgage that lender offers is consistent with prudent lending practices. Specifies requirements for prudent lending practices. Requires lender to analyze borrower's ability to make regularly scheduled payments under certain conditions. Requires mortgage that lender approves to include terms consistent with lender's analysis and provisions for managing risks. Prohibits lender from ceding required analysis, qualification decision or underwriting duty to third party with business objectives that differ from lender's. Creates rebuttable presumption that lender's use of qualified automated underwriting system constitutes compliance with required underwriting standards. Requires lender to establish and follow written policies that comply with underwriting requirements set forth in Act.

Requires lender to have evidence of borrower's ability to repay mortgage if lender qualifies borrower with reduced documentation or mortgage includes combination of certain risks. Specifies conditions under which lender may charge prepayment penalty. Specifies disclosures lender must make to borrower. Prohibits lender from interpreting or complying with Act to evade obligations under federal law.

Provides rulemaking, investigation and enforcement powers to Director of Department of Consumer and Business Services [and Attorney General. Provides for private right of action].

[Becomes operative 90 days after effective date of Act.]

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to regulation of residential mortgage lending; creating new provisions; amending ORS
3 59.850, 59.880 and 706.544; and declaring an emergency.

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

SHORT TITLE

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8 **SECTION 1. Sections 1 to 12 of this 2008 Act shall be known and may be cited as the**
9 **Responsible Home Buying Act.**

DEFINITIONS

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13 **SECTION 2. As used in sections 2 to 8 of this 2008 Act:**

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 (1) "Annual percentage rate" means the annual percentage rate defined in and calculated
2 according to the federal Truth in Lending Act, 15 U.S.C. 1601 et seq., and regulations adopted
3 thereunder.

4 (2) "Full amortization" means a calculation of how much a borrower must pay in sub-
5 stantially equal regularly scheduled amounts in order to reduce the principal and interest
6 due on a mortgage to zero at the end of a period of time specified in the mortgage agree-
7 ment.

8 (3) "Fully indexed rate" means the interest rate for an adjustable rate mortgage, deter-
9 mined at the time the loan closes, that is the sum of a rate determined by reference to a
10 specified index plus the margin that the lender may add after an introductory interest rate
11 expires at the end of a period of time specified in the mortgage agreement.

12 (4) "Interest-only mortgage" means a mortgage on which, for a period of time specified
13 in the mortgage agreement, a borrower may pay in a regularly scheduled payment only the
14 interest due on the mortgage.

15 (5)(a) "Lender" means:

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

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

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

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

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

21 (b) "Lender" does not include:

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

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

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

27 (6) "Margin" means the number of percentage points that a lender adds to a rate deter-
28 mined by reference to a specified index in order to calculate the interest rate applicable to
29 an adjustable rate mortgage after each adjustment period.

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

33 (b) "Mortgage" does not include:

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

36 (B) A debt the borrower incurs that is secured by real property the borrower owns, but
37 for which repayment is not due until the borrower dies, sells the property or no longer uses
38 the property as a primary residence.

39 (8) "Mortgage agreement" means the contract, promissory note, trust deed or other ev-
40 idence of security and all related agreements, documents and understandings that specify the
41 terms under which the borrower is obligated to repay the mortgage and that form the basis
42 for the lender's and borrower's legal duties in connection with the mortgage.

43 (9) "Negative amortization" means an increase in the principal of a mortgage that occurs
44 because a borrower pays less than the amount of principal and interest that would be due
45 in substantially equal regularly scheduled payments calculated to reduce the mortgage

1 amount to zero in a period of time specified in the mortgage agreement.

2 (10) "Nontraditional mortgage" means a debt that is secured by a mortgage or trust deed
3 on real property in this state, upon which is or will be located a structure or structures in-
4 tended for occupancy by one to four families and by the borrower as a principal residence,
5 and that is:

6 (a) An interest-only mortgage that the Director of the Department of Consumer and
7 Business Services identifies by rule as a nontraditional mortgage;

8 (b) A payment option adjustable rate mortgage; or

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

10 (A) That allows for negative amortization;

11 (B) That features an introductory interest rate; or

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

13 (11) "Payment option adjustable rate mortgage" means a mortgage that allows the bor-
14 rower, during any period in which a regularly scheduled payment is due, to pay one of a
15 number of optional amounts, including but not limited to:

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

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

23 (c) A payment of principal and interest that will fully amortize the amount of the mort-
24 gage.

25 (12) "Qualified automated underwriting system" means:

26 (a) A procedure, method or process that lenders commonly use for underwriting mort-
27 gages and that the Office of Federal Housing Enterprise Oversight, the Federal National
28 Mortgage Association or the Federal Home Loan Mortgage Corporation has developed, re-
29 viewed or accepted for use in underwriting mortgages, including a procedure, method or
30 process that makes use of computer software or standard forms; or

31 (b) A procedure, method or process that a lender has developed for proprietary use in
32 underwriting mortgages and that the Office of Federal Housing Enterprise Oversight, the
33 Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, an-
34 other federal housing authority or federal agency or the Department of Consumer and
35 Business Services has accepted for use in underwriting mortgages, including a procedure,
36 method or process that makes use of computer software or standard forms.

37 (13) "Reduced documentation" means a practice in which a lender qualifies a borrower
38 for a mortgage using documentation for verifying the borrower's income and assets that is
39 minimal or that is less comprehensive than the standard documentation lenders require for
40 mortgages.

41 (14) "Subprime mortgage" means a mortgage for which the annual percentage rate, ex-
42 clusive of any discount points a borrower pays, differs from the yield on securities of com-
43 parable maturity issued by the United States Treasury by:

44 (a) Three or more percentage points for first-lien mortgages, except first-lien mortgages
45 secured by a manufactured dwelling, as defined in ORS 446.003, in which case the difference

1 is 3.5 percentage points or more; or

2 (b) Five or more percentage points for second-lien mortgages, except second-lien mort-
3 gages secured by a manufactured dwelling, as defined in ORS 446.003, in which case the dif-
4 ference is 5.5 percentage points or more.

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6 **ABILITY TO PAY AND UNDERWRITING STANDARDS**
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8 **SECTION 3. (1) A lender that offers or originates a subprime mortgage or nontraditional**
9 **mortgage shall ensure that the underwriting standards the lender uses to qualify the bor-**
10 **rower for the mortgage are consistent with prudent lending practices. Except as provided in**
11 **section 4 of this 2008 Act, prudent lending practices shall include, but not be limited to:**

12 (a) Verifying a borrower's income, assets, credit history and debts and other obligations
13 using tax returns, payroll receipts, bank records or other reliable documentation of a similar
14 nature;

15 (b) Evaluating the borrower's capacity to repay a subprime mortgage or nontraditional
16 mortgage reasonably, with an adequate tolerance for risk, if the borrower has, individually
17 or in combination, a high loan-to-value ratio, a high debt-to-income ratio or a low credit
18 score; and

19 (c) Complying with requirements set forth in rules adopted by the Director of the De-
20 partment of Consumer and Business Services to implement and administer this section.

21 (2) If a lender offers or originates a subprime mortgage or nontraditional mortgage with
22 terms that permit negative amortization or substantial changes in the amount of the bor-
23 rower's regularly scheduled payment, prudent lending practices shall include an analysis of
24 the borrower's capacity to repay the subprime mortgage or nontraditional mortgage under
25 the following conditions, to the extent that each condition applies to the mortgage the lender
26 offers or originates:

27 (a) The borrower makes regularly scheduled payments that repay the mortgage by final
28 maturity at the fully indexed rate, assuming full amortization.

29 (b) The borrower pays a substantially increased amount in each regularly scheduled
30 payment after an introductory interest rate expires or amortization begins.

31 (c) The borrower pays, in addition to the total initial amount of the mortgage, any neg-
32 ative amortization.

33 (3) The terms of the subprime mortgage or nontraditional mortgage that a lender offers
34 to a borrower must be consistent with the lender's analysis under this section and must in-
35 clude provisions for managing default risks and other risks.

36 (4) A lender may not cede the analyses, qualification decisions or underwriting duties
37 required under this section to third parties or make use of standards developed by third
38 parties if the third parties have business objectives, risk tolerances or core competencies
39 that differ substantially from those of the lender.

40 (5) The lender's use of a qualified automated underwriting system to underwrite and ap-
41 prove a subprime mortgage or nontraditional mortgage creates a rebuttable presumption
42 that the lender has underwritten and approved the subprime mortgage or nontraditional
43 mortgage in compliance with the requirements of subsections (1) to (4) of this section, if the
44 lender's use is in accordance with the design and intended use of the qualified automated
45 underwriting system and includes all inputs and information required by the qualified auto-

1 mated underwriting system for the type of mortgage the lender is offering.

2 (6) A lender, in analyzing a borrower's capacity to repay a subprime mortgage or non-
3 traditional mortgage, may not use a credit score as a substitute for verifying the borrower's
4 income, assets or outstanding liabilities.

5 (7) A lender may not offer or originate a subprime mortgage or nontraditional mortgage
6 for which the lender qualifies or intends to qualify a borrower based on an assumption that
7 the property securing the mortgage will be refinanced or sold once amortization begins.

8 (8) A lender shall establish and follow written policies that direct the lender and agents
9 and employees of the lender to comply with the provisions of this section. The lender shall
10 also maintain records that document the lender's compliance.

11 **SECTION 4.** (1) In order to qualify a borrower for a subprime mortgage or nontraditional
12 mortgage on the basis of reduced documentation or to offer the borrower a mortgage with
13 a combination of provisions that increase risk, a lender must have adequate evidence of the
14 borrower's capacity to repay the mortgage.

15 (2) For the purposes of this section:

16 (a) Adequate evidence includes, but is not limited to:

17 (A) High credit scores;

18 (B) A low loan-to-value ratio or low debt-to-income ratio;

19 (C) Significant liquid assets;

20 (D) The borrower's agreement to pay private mortgage insurance; or

21 (E) Evidence of a similar character or reliability.

22 (b) Provisions that increase risk for a subprime mortgage or a nontraditional mortgage
23 may include, but are not limited to:

24 (A) An interest-only mortgage with a simultaneous second-lien loan;

25 (B) A mortgage that allows for delayed or negative amortization; or

26 (C) A mortgage in which the borrower has no equity or minimal equity in the real prop-
27 erty that secures the mortgage.

28 PREPAYMENT

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31 **SECTION 5.** (1) The terms of a subprime mortgage or nontraditional mortgage that a
32 lender offers or originates may impose a prepayment penalty for a full or partial repayment
33 of principal made within two years after the closing date for the mortgage or during a period
34 that ends 90 days before the first scheduled adjustment of the interest rate applicable to the
35 mortgage, whichever date occurs first. Any terms in a mortgage agreement that impose a
36 penalty for a prepayment in circumstances other than those described in this section are
37 void and unenforceable.

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

40 REQUIRED DISCLOSURES

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43 **SECTION 6.** (1) At the time a lender must provide a borrower with a good faith estimate
44 under the provisions of the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2604,
45 a lender that offers or originates a subprime mortgage or nontraditional mortgage shall

1 disclose to the borrower in nontechnical language:

2 (a) The amount of the initial payment for the mortgage;

3 (b) The interest rate applicable to the mortgage and whether the interest rate is subject
4 to change;

5 (c) The amount of the highest potential regularly scheduled payment for the mortgage
6 and the date on which or by which the payment may reach the highest potential amount, to
7 the extent that the highest potential regularly scheduled payment can be calculated for the
8 mortgage;

9 (d) The amount of any yield spread premium or similar method, arrangement or agree-
10 ment for compensation or payment made under the mortgage agreement to the person that
11 originates the mortgage or to another person that provides negotiating, brokering, funding
12 or related services in connection with the mortgage;

13 (e) The amount and timing of any rate adjustments that might occur under the mortgage
14 agreement; and

15 (f) Such other information as the Director of the Department of Consumer and Business
16 Services may require by rule.

17 (2) The director by rule may prescribe the form and contents of the disclosures required
18 under this section.

19
20 **BEST OFFER**

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22 **SECTION 7.** A lender offering or originating a subprime mortgage or nontraditional
23 mortgage shall clearly disclose to the borrower the costs and terms associated with the
24 subprime mortgage or nontraditional mortgage in accordance with section 6 of this 2008 Act
25 and shall, at the same time, disclose to the borrower the costs and terms of a fixed rate
26 mortgage the lender also offers or originates at the lowest annual percentage rate for which
27 the borrower qualifies.

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29 **NONDISCRIMINATION**

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31 **SECTION 8.** (1) A lender may not interpret or comply with the duties and standards im-
32 posed under sections 2 to 8 of this 2008 Act in such a way as to evade or attempt to evade
33 the duties and obligations imposed on the lender under the federal Equal Credit Opportunity
34 Act, 15 U.S.C. 1691 et seq., or the federal Fair Housing Act, 42 U.S.C. 3601 et seq., or regu-
35 lations adopted under those Acts.

36 (2) The lender's obligation to comply with the provisions of sections 2 to 8 of this 2008
37 Act does not constitute a defense in any action to enforce the provisions of the federal Equal
38 Credit Opportunity Act or the federal Fair Housing Act.

39 (3) In the event of a conflict between the duties and standards imposed under sections 2
40 to 8 of this 2008 Act and a provision of the federal Equal Credit Opportunity Act or the fed-
41 eral Fair Housing Act, a lender shall attempt to resolve the conflict, reasonably and in good
42 faith, by interpreting the duties and standards imposed under sections 2 to 8 of this 2008 Act
43 in such a way as to reduce or avoid the conflict. To the extent that the lender cannot resolve
44 a conflict, the lender shall comply with the provisions of federal law.

45 (4) A lender shall document the lender's discovery of a conflict of the type described in

1 this section, the steps the lender took to reduce or avoid the conflict and how the lender
2 resolved the conflict.

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4 **RULEMAKING AND ENFORCEMENT**

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6 **SECTION 9.** The Director of the Department of Consumer and Business Services may
7 adopt rules to administer and enforce sections 2 to 8 of this 2008 Act.

8 **SECTION 10.** (1) The Director of the Department of Consumer and Business Services
9 may make such public or private examinations and investigations within or outside this state
10 as the director deems necessary to:

11 (a) Determine whether a person has violated, is violating or is about to violate sections
12 2 to 8 of this 2008 Act, a rule adopted under section 9 of this 2008 Act or an order of the di-
13 rector to enforce a provision of sections 2 to 8 of this 2008 Act;

14 (b) Enforce sections 2 to 8 of this 2008 Act; or

15 (c) Aid the adoption of rules under section 9 of this 2008 Act.

16 (2) For the purpose of an examination or investigation under subsection (1) of this sec-
17 tion, the director may administer oaths and affirmations, subpoena witnesses, compel the
18 witnesses to attend, take evidence and require the production of books, papers, correspond-
19 ence, memoranda, agreements or other documents or records that the director deems rele-
20 vant or material to the inquiry. Each witness who appears before the director under a
21 subpoena shall receive the fees and mileage provided for witnesses in ORS 44.415 (2).

22 (3) If a person fails to comply with a subpoena or a party or witness refuses to testify
23 on any matter, the judge of the circuit court or of any county, on the application of the di-
24 rector, shall compel obedience by proceedings for contempt as in the case of disobedience of
25 the requirements of a subpoena issued from the court or a refusal to testify before the court.

26 (4) The director may require or permit a person to file a statement in writing, under oath
27 or otherwise as the director determines, as to all the facts and circumstances concerning the
28 matter to be examined or investigated.

29 (5) The director may publish information concerning any violation of sections 2 to 8 of
30 this 2008 Act, any rule adopted under section 9 of this 2008 Act or any order of the director
31 to enforce a provision of sections 2 to 8 of this 2008 Act.

32 (6) If the director has reason to believe that a person has violated, is violating or is about
33 to violate sections 2 to 8 of this 2008 Act, the director, subject to section 12 of this 2008 Act,
34 may issue an order directed to the person to cease and desist from the violation or threat-
35 ened violation.

36 **SECTION 11.** (1) If the Director of the Department of Consumer and Business Services
37 has reasonable cause to believe that a person has violated, is violating, is about to violate,
38 or has knowingly aided or abetted a violation of, sections 2 to 8 of this 2008 Act, a rule
39 adopted under section 9 of this 2008 Act or an order of the director to enforce a provision
40 of sections 2 to 8 of this 2008 Act, the director may:

41 (a) Impose a civil penalty as provided in ORS 183.745 of not more than \$5,000 for each
42 violation, provided that in the case of a continuing violation, each day's continuance is a
43 separate violation, but the maximum penalty for a continuing violation may not exceed
44 \$20,000; or

45 (b) Bring suit in the name and on behalf of the State of Oregon in the circuit court of

1 any county to enjoin the violation and to enforce sections 2 to 8 of this 2008 Act or any rule
2 adopted or order issued thereunder.

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

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

13 (4) If the court finds that a defendant has violated any provision of sections 2 to 8 of this
14 2008 Act, a rule adopted under section 9 of this 2008 Act or an order of the director to en-
15 force a provision of sections 2 to 8 of this 2008 Act, the court may appoint the director or
16 another person as a receiver for the defendant or the defendant's assets. The court may not
17 require the director to post a bond. The court may award reasonable attorney fees to the
18 director if the director prevails in an action under this section. The court may award rea-
19 sonable attorney fees to a defendant who prevails in an action under this section if the court
20 determines that the director had no objectively reasonable basis for asserting the claim or
21 no reasonable basis for appealing an adverse decision of the trial court.

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

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

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

31 **SECTION 12.** (1) Except as provided in ORS 183.745, the Director of the Department of
32 Consumer and Business Services, upon entering an order to enforce a provision of sections
33 2 to 8 of this 2008 Act, shall promptly give appropriate notice of the order as provided in this
34 subsection. The notice shall state that a hearing will be held on the order if a written demand
35 for hearing is filed with the director within 20 days after the date of service of the order.
36 The director shall give notice regarding an order entered under section 11 of this 2008 Act
37 to all interested persons.

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

41 (3) After the hearing, the director shall enter a final order vacating, modifying or af-
42 firming the director's previous order.

43 **SECTION 13.** ORS 59.850 is amended to read:

44 59.850. (1) The Director of the Department of Consumer and Business Services by rule shall es-
45 tablish procedures for licensing mortgage bankers or mortgage brokers. The director may coordinate

1 licensing with any national registration or licensing system.

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

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

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

16 (5) The total amount of the corporate surety bond or irrevocable letter of credit for a single
17 applicant under subsection (4) of this section shall be not less than [~~\$25,000 but not more than~~
18 ~~\$50,000~~] **\$100,000**, regardless of the number of offices of the applicant. If an applicant has more than
19 one office in this state to engage in residential mortgage transactions as a mortgage banker or
20 mortgage broker, the amount of the bond or letter of credit shall increase for each additional office
21 in an amount determined by the director by rule. The amount of the increase in the bond or letter
22 of credit for each additional office shall be not less than \$5,000 but not more than \$10,000. The di-
23 rector may adjust the minimum amount of the increase in the bond or letter of credit for additional
24 offices as necessary to comply with the [~~\$50,000 limit~~] **\$100,000 requirement**.

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

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

32 **(8) A mortgage banker or mortgage broker shall purchase and maintain an errors and**
33 **omissions insurance policy in an amount of at least \$500,000 at all times during which the**
34 **mortgage banker or mortgage broker conducts business in this state or holds a license issued**
35 **under ORS 59.840 to 59.980.**

36 [~~(8)~~] (9) 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 8 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)~~] (10) The fees under this section are not refundable except for those fees that the director
44 determines by rule may be refundable.

45 **SECTION 14.** 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 8 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 8 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 15.** 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 8 of this 2008 Act**.

17 18 **APPLICABILITY AND OPERATIVE DATE**

19
20 **SECTION 16.** (1) Sections 3, 4 and 6 of this 2008 Act apply to subprime mortgages and
21 nontraditional mortgages originated on or after the operative date set forth in section 17 of
22 this 2008 Act.

23 (2) Sections 2, 5 and 7 to 12 of this 2008 Act and the amendments to ORS 59.850, 59.880
24 and 706.544 by sections 13 to 15 of this 2008 Act apply to subprime mortgages and nonradi-
25 tional mortgages originated on or after the effective date of this 2008 Act.

26 **SECTION 17.** (1) Sections 3, 4 and 6 of this 2008 Act become operative 120 days following
27 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 sections 3, 4 and 6 of this 2008 Act.

32 33 **CAPTIONS**

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35 **SECTION 18.** The unit captions used in this 2008 Act are provided only for the conven-
36 ience of the reader and do not become part of the statutory law of this state or express any
37 legislative intent in the enactment of this 2008 Act.

38 39 **EMERGENCY CLAUSE**

40
41 **SECTION 19.** This 2008 Act being necessary for the immediate preservation of the public
42 peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect
43 on its passage.