

Senate Bill 1090

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 **as introduced**.

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.

Provides 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 708A.255; and declaring an emergency.

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

5 **SECTION 1. The Legislative Assembly finds and declares that:**

6 **(1) The Oregon market for subprime loans tripled in just one year, with loan volume**
7 **jumping from \$2.05 billion in 2004 to \$6.15 billion in 2005;**

8 **(2) The majority of subprime loans are used to refinance existing home loans and are not**
9 **new home loans;**

10 **(3) Foreclosures on homes secured by subprime loans are projected to increase in the**
11 **future;**

12 **(4) It is reasonable for borrowers in Oregon to expect that lending institutions will act**
13 **in the borrower's best interest;**

14 **(5) Competition and self-regulation have not prevented unprincipled creditors from in-**
15 **cluding predatory terms in home loans; and**

16 **(6) It is necessary to act now to protect Oregon borrowers, ensure fairness for respon-**
17 **sible lending institutions and uphold responsible lending practices by establishing strong**
18 **consumer protections for borrowers.**

19 **SECTION 1a. Sections 2 to 9 of this 2008 Act shall be known and may be cited as the**
20 **"Responsible Home Buying Act."**

21 **SECTION 2. As used in sections 2 to 9 of this 2008 Act:**

22 **(1) "Affiliate" means a person that:**

23 **(a) Controls another person, directly or indirectly;**

24 **(b) Is controlled by another person; or**

25 **(c) Is under common ownership or control with another person.**

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 (2) “Annual percentage rate” means a measure of the cost of credit for a home loan,
2 expressed as a yearly rate and calculated according to the provisions of 12 C.F.R. 226.

3 (3) “Bona fide discount points” means an amount that the borrower pays expressly to
4 reduce the interest rate for a home loan if the home loan, before application of the bona fide
5 discount points, does not otherwise qualify as a subprime loan and the payment reduces the
6 interest rate for the home loan.

7 (4) “Borrower” means an individual who is obligated to repay a home loan. “Borrower”
8 includes a coborrower, cosigner or guarantor.

9 (5) “Creditor” has the meaning given that term in 15 U.S.C. 1602(f).

10 (6)(a) “Home loan” means a transaction in which:

11 (A) A borrower incurs a debt, including a debt in connection with an open-end credit plan
12 or arrangement, primarily for personal, family or household purposes;

13 (B) The debt is secured by a mortgage or trust deed on real estate located in this state
14 upon which is or will be located one or more structures intended for use as a principal
15 dwelling by the borrower or by one to four families;

16 (C) The debt amount does not exceed the maximum original principal obligation set forth
17 in 12 U.S.C. 1454(a)(2); and

18 (D) The debt qualifies as a federally related mortgage loan under 24 C.F.R. 3500.2.

19 (b) “Home loan” does not include:

20 (A) A reverse mortgage transaction, as set forth in 15 U.S.C. 1602(bb), originated in ac-
21 cordance with Federal Housing Administration or Federal National Mortgage Association
22 underwriting standards; or

23 (B) A first or second mortgage originated by a nonprofit organization or a unit of local
24 government and funded through a federal, state or local government program.

25 (7) “Mortgage broker” has the meaning given that term in 24 C.F.R. 3500.2.

26 (8) “Nontraditional mortgage” has the meaning given that term in “Interagency Guidance
27 on Nontraditional Mortgage Product Risks, 71 Fed. Reg. 58, 609 (2006).

28 (9)(a) “Points and fees” means:

29 (A) All items included in the definition of “finance charge” in 12 C.F.R. 226.4(a) and (b)
30 except interest or the time price differential.

31 (B) All items described in 12 C.F.R. 226.32(b)(1)(iii).

32 (C) All compensation paid directly or indirectly to a mortgage broker from any source,
33 including compensation paid to a mortgage broker that originates a home loan under the
34 mortgage broker’s own name in a table-funded transaction.

35 (D) The cost to the borrower of insurance premiums for credit life, credit disability,
36 credit unemployment or credit property insurance or any other life or health insurance that
37 the creditor finances directly or indirectly and any fees for a debt cancellation or suspension
38 agreement or contract that the creditor finances directly or indirectly. For the purposes of
39 this subparagraph, a creditor does not finance insurance premiums or debt cancellation or
40 suspension fees if the premiums or fees are calculated and paid monthly or periodically ac-
41 cording to a regular schedule.

42 (E) The maximum prepayment fee or penalty that may be charged or collected under the
43 terms of the home loan.

44 (F) All prepayment fees and penalties the borrower incurs in refinancing a home loan
45 that the creditor or an affiliate of the creditor made previously or now holds.

1 (G) Other costs of credit that the Department of Consumer and Business Services spec-
2 ifies by rule.

3 (b) "Points and fees" does not include:

4 (A) Taxes, filing fees, recording fees or other charges or fees paid to or required by public
5 officials for the purpose of determining the existence of or perfecting, releasing or satisfying
6 a security interest;

7 (B) Bona fide and reasonable charges or fees paid to a person other than the creditor or
8 an affiliate of the creditor, including but not limited to fees for tax payment services, flood
9 certification, determinations of pest infestations or flood risks, appraisals, inspections per-
10 formed before closing, credit reports or surveys;

11 (C) Attorney fees or notary fees;

12 (D) Escrow charges, if the creditor does not require or retain the escrow charge;

13 (E) Premiums for title insurance; or

14 (F) Premiums for fire, hazard or flood insurance, if the person charging the premium
15 makes the disclosures and follows the requirements set forth in 12 C.F.R. 226.4(d)(2).

16 (10) "Subprime loan" means a home loan for which the annual percentage rate, exclusive
17 of bona fide discount points a borrower pays, differs from the yield on securities of compa-
18 rable maturity issued by the United States Treasury:

19 (a) By three or more percentage points for first lien home loans; or

20 (b) By five or more percentage points for junior lien home loans.

21 (11) "Total loan amount" means:

22 (a) The principal of the home loan minus points and fees included in the principal; or

23 (b) The total amount of the line of credit allowed under the home loan at closing, if the
24 home loan is an open-end credit plan or arrangement.

25 SECTION 2a. References in section 2 of this 2008 Act to the Code of Federal Regulations,
26 the United States Code or other federal law are references to those laws of the United States
27 as amended and in effect on the effective date of this 2008 Act.

28 SECTION 3. The Department of Consumer and Business Services shall adopt rules for
29 the purposes of implementing and enforcing sections 2 to 9 of this 2008 Act. In adopting rules
30 under this section, the department shall identify and prohibit unfair, deceptive or abusive
31 acts and practices associated with advertising, originating, brokering, negotiating, making
32 or servicing home loans or acts and practices intended to evade the requirements of sections
33 2 to 9 of this 2008 Act.

34 SECTION 4. (1) A creditor may make or a mortgage broker may provide services related
35 to a home loan only if the creditor and the mortgage broker reasonably believe at the time
36 the home loan is closed that the borrower residing on the property subject to the home loan
37 can make scheduled loan payments, tax payments and insurance payments associated with
38 the home loan.

39 (2) A creditor's or a mortgage broker's belief that a borrower can make the payments
40 described in subsection (1) of this section for a subprime loan or a nontraditional mortgage
41 is reasonable only if the creditor or mortgage broker forms the belief after evaluating, at a
42 minimum, the borrower's:

43 (a) Income, verified with the most appropriate documentation available, including tax
44 returns, payroll receipts, bank records or other reliable documentation of a similar nature;

45 (b) Credit history, current debts and other obligations;

1 (c) Employment status;

2 (d) Debt-to-income ratio, determined by comparing the borrower's monthly gross income
 3 with the borrower's current or expected debt payments and housing payments, including
 4 taxes, insurance, required homeowner or condominium fees and subordinate mortgages,
 5 whether existing previously or made to the same borrower at the same time as the subprime
 6 loan or nontraditional mortgage; and

7 (e) Other available financial resources apart from the borrower's equity in the principal
 8 dwelling that secures or will secure the subprime loan or nontraditional mortgage.

9 (3) A creditor or mortgage broker, in forming a reasonable belief that a borrower can
 10 make the payments described in subsection (1) of this section, shall assume in calculating
 11 or otherwise determining the payment amounts applicable to a subprime loan or nontradi-
 12 tional mortgage that:

13 (a) The borrower will make payments according to a fully amortizing repayment schedule
 14 and at the fully indexed rate; and

15 (b) The applicable payment amount for a subprime loan, nontraditional mortgage or other
 16 home loan that permits negative amortization to accrue includes both the initial loan amount
 17 plus the maximum amount that could accrue under the negative amortization provision of
 18 the subprime loan, nontraditional mortgage or home loan.

19 (4) A creditor or mortgage broker may be rebuttably presumed to have made or provided
 20 services related to a subprime loan or nontraditional mortgage without regard to a borrow-
 21 er's ability to repay the subprime loan or nontraditional mortgage if, at the time the initial
 22 payment on a subprime loan or nontraditional mortgage is due, the total monthly debts of
 23 a borrower residing on the property subject to the subprime loan or nontraditional mortgage
 24 exceed 50 percent of the borrower's verified monthly gross income. For purposes of this
 25 subsection, the borrower's total monthly debts include the borrower's total monthly housing
 26 payments, property taxes, insurance, required homeowner or condominium fees and subor-
 27 dinate mortgages, whether existing previously or made to the same borrower at the same
 28 time as the subprime loan or nontraditional mortgage. A creditor or mortgage broker may
 29 rebut the presumption set forth in this subsection by complying with rules adopted by the
 30 Department of Consumer and Business Services for evaluating the borrower's residual in-
 31 come.

32 **SECTION 5.** (1) A creditor making or a mortgage broker providing services related to a
 33 home loan may not:

34 (a) Refinance a borrower's existing home loan if, in light of all of the borrower's cir-
 35 cumstances, the new home loan does not provide the borrower with a reasonable, tangible
 36 net benefit. The creditor or mortgage broker shall determine whether the home loan provides
 37 a reasonable, tangible net benefit in accordance with rules adopted by the Department of
 38 Consumer and Business Services, which shall require, at a minimum, a comparison between
 39 the cost and terms of the existing home loan and the cost and terms of the new home loan.

40 (b) Charge, impose, finance or cause a borrower to pay, directly or indirectly, points and
 41 fees that exceed five percent of the total loan amount or, if the total loan amount is less
 42 than \$40,000, six percent of the total loan amount. The calculation of the appropriate limi-
 43 tation is subject to these assumptions and exclusions:

44 (A) Points and fees for open-end credit plans or arrangements include the maximum
 45 prepayment penalty that the borrower might or must pay under the terms of the open-end

1 credit plan or arrangement and the minimum fees the borrower must pay to draw down an
2 amount equal to the total credit line; and

3 (B) A creditor or mortgage broker may exclude from the limitations set forth in this
4 paragraph not more than two percent of the total loan amount that a borrower pays as bona
5 fide discount points or as bona fide fees to a federal or state agency that insures payment
6 of some portion of the home loan.

7 (c) Charge or collect a prepayment fee or penalty in connection with a subprime loan or
8 nontraditional mortgage. A prepayment fee or penalty that is included in the terms of a
9 subprime loan or nontraditional mortgage is void and unenforceable.

10 (d) Charge or collect a prepayment fee or penalty in excess of one percent of the amount
11 the borrower is obligated to pay in the course of one year under the terms of a home loan
12 other than a subprime loan or a nontraditional mortgage.

13 (e) Influence or attempt to influence, by means of coercion, intimidation or direct or in-
14 direct compensation, an appraiser's independent judgment concerning the value of real estate
15 purchased with financing from or offered as security for a home loan.

16 (f) Pay money or provide direct or indirect compensation to a person if the money or
17 compensation acts as or is intended to act as an inducement for the person to originate,
18 negotiate or advise a borrower to accept a home loan that is more costly than a home loan
19 for which the borrower otherwise qualifies.

20 (2) A creditor shall clearly disclose to the borrower the terms and costs associated with
21 a fixed rate home loan at the lowest annual percentage rate for which the borrower qualifies
22 in each case in which the creditor offers the borrower an adjustable rate home loan.

23 (3) In any home loan transaction, a creditor has and must act in accordance with the
24 following duties to the borrower:

25 (a) A duty of good faith and fair dealing in any transaction, practice or course of business
26 related to advertising, soliciting, making, servicing, purchasing or selling a home loan.

27 (b) A duty to use reasonable efforts to make a home loan that is reasonably advantageous
28 to the borrower in light of all of the borrower's circumstances and taking into account the
29 terms, interest rate and annual percentage rate, points and fees and other charges associ-
30 ated with a home loan for which the borrower qualifies.

31 (4) A person may not limit or waive any of the duties or standards of care set forth in
32 subsection (3) of this section.

33 **SECTION 6.** (1) A mortgage broker is a fiduciary of the borrower and, in addition to any
34 duties set forth under other provisions of law, has and must act in accordance with these
35 duties to the borrower:

36 (a) A duty to act in the best interest of and with the utmost good faith toward the bor-
37 rower without any compromise of the borrower's right or interest in favor of another per-
38 son's right or interest, including a right or interest of the mortgage broker; and

39 (b) A duty to use reasonable efforts to negotiate and secure a home loan that is in the
40 best interest of the borrower in light of all of the borrower's circumstances and taking into
41 account the terms, interest rate and annual percentage rate, points and fees and other
42 charges associated with a home loan for which the borrower qualifies.

43 (2) A mortgage broker may not receive or pay to another person money or direct or in-
44 direct compensation if the money or compensation acts as or is intended to act as an in-
45 ducement for the mortgage broker or the other person to originate, negotiate or advise a

1 borrower to accept a home loan that is more costly than a home loan for which the borrower
2 otherwise qualifies.

3 (3) A person may not limit or waive any of the duties or standards of care set forth in
4 subsection (1) of this section. Any such limitation or waiver is void and unenforceable.

5 **SECTION 7.** (1) The Director of the Department of Consumer and Business Services may
6 investigate and by order prohibit acts or practices associated with advertising, originating,
7 brokering, negotiating, making or servicing home loans that in the director's reasonable
8 judgment are unfair, deceptive or abusive, that are intended to evade the requirements of
9 sections 2 to 9 of this 2008 Act or that are otherwise not in the best interest of persons who
10 are or who seek to become borrowers.

11 (2) After making a finding that an act or practice described in subsection (1) of this
12 section is unfair, deceptive or abusive or is intended to evade the requirements of sections
13 2 to 9 of this 2008 Act, the director may, in the manner provided by law, commence an action
14 in the name of this state for an injunction to restrain or prevent the act or practice and to
15 require compliance with the provisions of sections 2 to 9 of this 2008 Act. If the court finds
16 for the director, the court shall grant an injunction or other equitable relief in addition to
17 any other relief the court deems proper.

18 (3) The director may impose a civil penalty under ORS 183.745 in an amount not to exceed
19 \$50,000 for each violation of a provision of sections 2 to 9 of this 2008 Act. The director may
20 impose separate penalties for each person's violation even if each person's violation occurred
21 as part of the same transaction.

22 **SECTION 8.** The Attorney General may commence and maintain an action against a
23 creditor for violating a provision of sections 2 to 9 of this 2008 Act and may seek in the
24 action appropriate injunctive relief and civil penalties. If the court finds for the Attorney
25 General, the court shall grant an injunction or other equitable relief in addition to any other
26 relief the court deems proper.

27 **SECTION 9.** (1) In addition to any action that the Director of the Department of Con-
28 sumer and Business Services or the Attorney General may take under sections 2 to 9 of this
29 2008 Act, a borrower may bring an action for damages that the borrower sustains as a result
30 of a violation of a provision of sections 2 to 9 of this 2008 Act.

31 (2) If a court finds that a defendant in an action under this section knowingly violated a
32 provision of sections 2 to 9 of this 2008 Act, in addition to any other award of damages for
33 violating a provision of sections 2 to 9 of this 2008 Act, the court shall award the borrower
34 treble the amount of the actual damages, including but not limited to incidental and conse-
35 quential damages, sustained as a result of the knowing violation.

36 (3) A court may award reasonable attorney fees, costs and expenses to a borrower pre-
37 vailing in an action under this section. If a court finds that the borrower brought the action
38 in bad faith or solely for purposes of harassment, the court may award reasonable attorney
39 fees to the prevailing defendant.

40 (4) A plaintiff must commence an action under this section within six years after the
41 date on which a home loan subject to the provisions of sections 2 to 9 of this 2008 Act closes.
42 The time limitation set forth in this subsection, however, does not apply to an affirmative
43 defense or a counterclaim or cross-claim raised in an action properly brought after the time
44 limitation set forth in this subsection expires. Raising an affirmative defense or a counter-
45 claim or cross-claim in such an action does not limit or diminish remedies available to the

1 **plaintiff under this section.**

2 **SECTION 10.** ORS 708A.255 is amended to read:

3 708A.255. (1) Except as otherwise provided in this section, there is no limitation on the rate of
4 interest [*or on the amount of other charges*] that a financial institution may contract for and receive
5 for a loan or use of money. **Except as otherwise provided in this section or sections 2 to 9 of**
6 **this 2008 Act, there is no limit on the amount of charges other than interest that a financial**
7 **institution may contract for and receive for a loan or use of money.**

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

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

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

23 (3) Any installment of an installment loan or payment under an open-end credit arrangement
24 that is not paid when due shall continue to bear interest until paid. In addition, if the installment
25 or payment is not paid when due, the installment or payment may bear a late charge in such amount
26 as is agreed to by the lender and the borrower. However, except for loans secured by real property,
27 the lender may impose a late charge only if:

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

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

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

44 **SECTION 11.** (1) **Sections 2 to 9 of this 2008 Act and the amendments to ORS 708A.255**
45 **by section 10 of this 2008 Act become operative 90 days after the effective date of this 2008**

1 **Act and apply to all home loans originated on or after the operative date of sections 2 to 9**
2 **of this 2008 Act and the amendments to ORS 708A.255 by section 10 of this 2008 Act.**

3 **(2) The Director of the Department of Consumer and Business Services may take any**
4 **action before the operative date set forth in subsection (1) of this section that is necessary**
5 **to enable the director to exercise, on and after the operative date, all of the duties, functions**
6 **and powers conferred on the director by sections 2 to 9 of this 2008 Act and the amendments**
7 **to ORS 708A.255 by section 10 of this 2008 Act.**

8 **SECTION 12. This 2008 Act being necessary for the immediate preservation of the public**
9 **peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect**
10 **on its passage.**

11 _____