

SENATE AMENDMENTS TO SENATE BILL 1090

By COMMITTEE ON COMMERCE AND LABOR

February 13

1 On page 1 of the printed bill, line 3, delete “708A.255” and insert “59.850, 59.880 and 706.544”.
2 Delete lines 5 through 25 and delete pages 2 through 8 and insert:

“SHORT TITLE

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6 “SECTION 1. Sections 1 to 12 of this 2008 Act shall be known and may be cited as the
7 Responsible Home Buying Act.

“DEFINITIONS

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11 “SECTION 2. As used in sections 2 to 8 of this 2008 Act:

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

15 “(2) ‘Full amortization’ means a calculation of how much a borrower must pay in sub-
16 stantially equal regularly scheduled amounts in order to reduce the principal and interest
17 due on a mortgage to zero at the end of a period of time specified in the mortgage agree-
18 ment.

19 “(3) ‘Fully indexed rate’ means the interest rate for an adjustable rate mortgage, deter-
20 mined at the time the loan closes, that is the sum of a rate determined by reference to a
21 specified index plus the margin that the lender may add after an introductory interest rate
22 expires at the end of a period of time specified in the mortgage agreement.

23 “(4) ‘Interest-only mortgage’ means a mortgage on which, for a period of time specified
24 in the mortgage agreement, a borrower may pay in a regularly scheduled payment only the
25 interest due on the mortgage.

26 “(5)(a) ‘Lender’ means:

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

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

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

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

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

32 “(b) ‘Lender’ does not include:

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

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

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

3 “(6) ‘Margin’ means the number of percentage points that a lender adds to a rate deter-
4 mined by reference to a specified index in order to calculate the interest rate applicable to
5 an adjustable rate mortgage after each adjustment period.

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

9 “(b) ‘Mortgage’ does not include:

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

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

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

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

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

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

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

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

31 “(A) That allows for negative amortization;

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

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

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

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

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

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

1 the following conditions, to the extent that each condition applies to the mortgage the lender
2 offers or originates:

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

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

7 “(c) The borrower pays, in addition to the total initial amount of the mortgage, any
8 negative amortization.

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

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

16 “(5) The lender’s use of a qualified automated underwriting system to underwrite and
17 approve a subprime mortgage or nontraditional mortgage creates a rebuttable presumption
18 that the lender has underwritten and approved the subprime mortgage or nontraditional
19 mortgage in compliance with the requirements of subsections (1) to (4) of this section, if the
20 lender’s use is in accordance with the design and intended use of the qualified automated
21 underwriting system and includes all inputs and information required by the qualified auto-
22 mated underwriting system for the type of mortgage the lender is offering.

23 “(6) A lender, in analyzing a borrower’s capacity to repay a subprime mortgage or non-
24 traditional mortgage, may not use a credit score as a substitute for verifying the borrower’s
25 income, assets or outstanding liabilities.

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

29 “(8) A lender shall establish and follow written policies that direct the lender and agents
30 and employees of the lender to comply with the provisions of this section. The lender shall
31 also maintain records that document the lender’s compliance.

32 “**SECTION 4.** (1) In order to qualify a borrower for a subprime mortgage or nontradi-
33 tional mortgage on the basis of reduced documentation or to offer the borrower a mortgage
34 with a combination of provisions that increase risk, a lender must have adequate evidence
35 of the borrower’s capacity to repay the mortgage.

36 “(2) For the purposes of this section:

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

38 “(A) High credit scores;

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

40 “(C) Significant liquid assets;

41 “(D) The borrower’s agreement to pay private mortgage insurance; or

42 “(E) Evidence of a similar character or reliability.

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

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

1 and shall, at the same time, disclose to the borrower the costs and terms of a fixed rate
2 mortgage the lender also offers or originates at the lowest annual percentage rate for which
3 the borrower qualifies.

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5 **“NONDISCRIMINATION**

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

12 **“(2) The lender’s obligation to comply with the provisions of sections 2 to 8 of this 2008**
13 **Act does not constitute a defense in any action to enforce the provisions of the federal Equal**
14 **Credit Opportunity Act or the federal Fair Housing Act.**

15 **“(3) In the event of a conflict between the duties and standards imposed under sections**
16 **2 to 8 of this 2008 Act and a provision of the federal Equal Credit Opportunity Act or the**
17 **federal Fair Housing Act, a lender shall attempt to resolve the conflict, reasonably and in**
18 **good faith, by interpreting the duties and standards imposed under sections 2 to 8 of this 2008**
19 **Act in such a way as to reduce or avoid the conflict. To the extent that the lender cannot**
20 **resolve a conflict, the lender shall comply with the provisions of federal law.**

21 **“(4) A lender shall document the lender’s discovery of a conflict of the type described in**
22 **this section, the steps the lender took to reduce or avoid the conflict and how the lender**
23 **resolved the conflict.**

24
25 **“RULEMAKING AND ENFORCEMENT**

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

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

32 **“(a) Determine whether a person has violated, is violating or is about to violate sections**
33 **2 to 8 of this 2008 Act, a rule adopted under section 9 of this 2008 Act or an order of the di-**
34 **rector to enforce a provision of sections 2 to 8 of this 2008 Act;**

35 **“(b) Enforce sections 2 to 8 of this 2008 Act; or**

36 **“(c) Aid the adoption of rules under section 9 of this 2008 Act.**

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

43 **“(3) If a person fails to comply with a subpoena or a party or witness refuses to testify**
44 **on any matter, the judge of the circuit court or of any county, on the application of the di-**
45 **rector, shall compel obedience by proceedings for contempt as in the case of disobedience of**

1 the requirements of a subpoena issued from the court or a refusal to testify before the court.

2 “(4) The director may require or permit a person to file a statement in writing, under
3 oath or otherwise as the director determines, as to all the facts and circumstances con-
4 cerning the matter to be examined or investigated.

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

8 “(6) If the director has reason to believe that a person has violated, is violating or is
9 about to violate sections 2 to 8 of this 2008 Act, the director, subject to section 12 of this 2008
10 Act, may issue an order directed to the person to cease and desist from the violation or
11 threatened violation.

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

17 “(a) Impose a civil penalty as provided in ORS 183.745 of not more than \$5,000 for each
18 violation, provided that in the case of a continuing violation, each day’s continuance is a
19 separate violation, but the maximum penalty for a continuing violation may not exceed
20 \$20,000; or

21 “(b) Bring suit in the name and on behalf of the State of Oregon in the circuit court of
22 any county to enjoin the violation and to enforce sections 2 to 8 of this 2008 Act or any rule
23 adopted or order issued thereunder.

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

28 “(3) The court may fine the person against whom the court enters an order under sub-
29 section (2) of this section not more than \$5,000 for each violation. The fine shall be entered
30 as a judgment and paid to the General Fund of the State Treasury. Each violation of the
31 court order is a separate offense. For a continuing violation, each day’s continuance is a
32 separate violation, but the maximum penalty for a continuing violation may not exceed
33 \$20,000 for each offense.

34 “(4) If the court finds that a defendant has violated any provision of sections 2 to 8 of
35 this 2008 Act, a rule adopted under section 9 of this 2008 Act or an order of the director to
36 enforce a provision of sections 2 to 8 of this 2008 Act, the court may appoint the director or
37 another person as a receiver for the defendant or the defendant’s assets. The court may not
38 require the director to post a bond. The court may award reasonable attorney fees to the
39 director if the director prevails in an action under this section. The court may award rea-
40 sonable attorney fees to a defendant who prevails in an action under this section if the court
41 determines that the director had no objectively reasonable basis for asserting the claim or
42 no reasonable basis for appealing an adverse decision of the trial court.

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

44 “(a) A claim for restitution or damages on behalf of a person injured by the act or
45 practice constituting the subject matter of the action. The court has jurisdiction to award

1 appropriate relief to the person if the court finds that enforcement of the rights of the per-
2 son by private civil action, whether by class action or otherwise, would be so burdensome
3 or expensive as to be impractical.

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

7 “**SECTION 12.** (1) Except as provided in ORS 183.745, the Director of the Department of
8 Consumer and Business Services, upon entering an order to enforce a provision of sections
9 2 to 8 of this 2008 Act, shall promptly give appropriate notice of the order as provided in this
10 subsection. The notice shall state that a hearing will be held on the order if a written demand
11 for hearing is filed with the director within 20 days after the date of service of the order.
12 The director shall give notice regarding an order entered under section 11 of this 2008 Act
13 to all interested persons.

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

17 “(3) After the hearing, the director shall enter a final order vacating, modifying or af-
18 firming the director’s previous order.

19 “**SECTION 13.** ORS 59.850 is amended to read:

20 “59.850. (1) The Director of the Department of Consumer and Business Services by rule shall
21 establish procedures for licensing mortgage bankers or mortgage brokers. The director may coordi-
22 nate licensing with any national registration or licensing system.

23 “(2) An applicant for a license as a mortgage banker or mortgage broker, or a managing partner,
24 director, executive officer or other individual occupying a similar position or performing similar
25 functions for the applicant, shall have, during the five years immediately preceding the time of ap-
26 plication, not less than three years’ experience in the mortgage business, three years’ experience
27 negotiating loans in a related business satisfactory to the director or three years’ equivalent lending
28 experience in a related business satisfactory to the director.

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

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

37 “(5) The total amount of the corporate surety bond or irrevocable letter of credit for a single
38 applicant under subsection (4) of this section shall be not less than [~~\$25,000 but not more than~~
39 ~~\$50,000~~ **\$100,000**, regardless of the number of offices of the applicant. If an applicant has more than
40 one office in this state to engage in residential mortgage transactions as a mortgage banker or
41 mortgage broker, the amount of the bond or letter of credit shall increase for each additional office
42 in an amount determined by the director by rule. The amount of the increase in the bond or letter
43 of credit for each additional office shall be not less than \$5,000 but not more than \$10,000. The di-
44 rector may adjust the minimum amount of the increase in the bond or letter of credit for additional
45 offices as necessary to comply with the [~~\$50,000 limit~~] **\$100,000 requirement**.

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

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

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

12 “[8] (9) The director shall:

13 “(a) Charge and collect fees for initial and renewal license applications;

14 “(b) Set by rule all fees required under this section. Fees shall be set to reflect those amounts
15 sufficient to meet the costs of administering ORS 59.840 to 59.980 **and sections 2 to 8 of this 2008
16 Act**, including those amounts sufficient to establish and maintain a reasonable emergency fund; and

17 “(c) Set by rule the amounts of corporate surety bonds and irrevocable letters of credit required
18 under this section.

19 “[9] (10) The fees under this section are not refundable except for those fees that the director
20 determines by rule may be refundable.

21 “**SECTION 14.** ORS 59.880 is amended to read:

22 “59.880. The Director of the Department of Consumer and Business Services shall have general
23 supervision and control over all loan originators, mortgage bankers and mortgage brokers residing
24 or doing business in this state and engaged in any activity subject to the provisions of ORS 59.840
25 to 59.980 **and sections 2 to 8 of this 2008 Act**. All such persons and their records and everything
26 connected with their activities shall be subject to examination by the director at any time. The
27 provisions of this section and of any other section of ORS 59.840 to 59.980 **and sections 2 to 8 of
28 this 2008 Act** relating to examinations shall extend to any person who should have been reported
29 as a loan originator under ORS 59.969 or licensed as a mortgage banker or mortgage broker, any
30 person exempted by rule from those definitions or any person whose license has expired or has been
31 withdrawn, canceled, suspended, conditioned or revoked. The director may collect from each such
32 person the actual expenses incurred in that examination.

33 “**SECTION 15.** ORS 706.544 is amended to read:

34 “706.544. A banking institution or a non-Oregon institution shall pay to the Director of the De-
35 partment of Consumer and Business Services the actual costs of the Department of Consumer and
36 Business Services, as determined by the director, for conducting any special examination or taking
37 any action under ORS 706.600 **or under sections 2 to 8 of this 2008 Act**.

38 39 “**APPLICABILITY AND OPERATIVE DATE**

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

44 “(2) **Sections 2, 5 and 7 to 12 of this 2008 Act and the amendments to ORS 59.850, 59.880
45 and 706.544 by sections 13 to 15 of this 2008 Act apply to subprime mortgages and nontradi-**

1 tional mortgages originated on or after the effective date of this 2008 Act.

2 **“SECTION 17.** (1) Sections 3, 4 and 6 of this 2008 Act become operative 120 days following
3 the effective date of this 2008 Act.

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 sections 3, 4 and 6 of this 2008 Act.

8
9 **“CAPTIONS**

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

14
15 **“EMERGENCY CLAUSE**

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

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