

**A-Engrossed**  
**House Bill 2188**

Ordered by the House March 27  
Including House Amendments dated March 27

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Consumer and Business Services)

**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.

Prohibits mortgage banker, mortgage broker or loan originator from making, negotiating or offering to make or negotiate negative amortization loan without evaluating and verifying borrower's ability to repay loan.

Requires mortgage banker, mortgage broker or loan originator that advertises or solicits business and conducts transaction substantially in language other than English to provide borrower with certain materials in language in which parties conduct transaction.

Provides that court may not award attorney fees to mortgage banker or mortgage broker that prevails as defendant in action brought in connection with residential mortgage transaction if person who commenced action did so in good faith and provided defendant with certain notices before commencing action. Extends time limit for commencing action by 20 days for person who complies with these requirements.

**A BILL FOR AN ACT**

1  
2 Relating to mortgage transactions; creating new provisions; and amending ORS 59.925.

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

4 **SECTION 1. Sections 2 and 3 of this 2009 Act are added to and made a part of ORS 59.840**  
5 **to 59.980.**

6 **SECTION 2. (1)(a) As used in this section, "negative amortization loan" means a mort-**  
7 **gage loan or mortgage banking loan that is structured in such a way that a borrower in any**  
8 **period may make a scheduled loan payment that is insufficient to pay accruing interest.**

9 (b) "Negative amortization loan" does not include:

10 (A) A loan commonly known as a bridge loan, the terms of which specify that:

11 (i) The maturity period for the loan is less than 18 months; and

12 (ii) The borrower may pay only interest until a time when the entire unpaid loan balance  
13 is due and payable.

14 (B) A mortgage loan in which:

15 (i) The principal amount is not more than \$50,000; and

16 (ii) The combined loan to value ratio between all mortgage loans that are secured by the  
17 same property and the value of the securing property is not more than 50 percent.

18 (C) A loan commonly known as a reverse mortgage, the terms of which specify that the  
19 loan:

20 (i) Is a non-recourse loan secured by real property;

21 (ii) Provides cash advances to the borrower based on the equity or value in the borrow-  
22 er's owner-occupied principal residence;

**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 (iii) Requires no payment of principal or interest until the entire loan becomes due and  
2 payable; and

3 (iv) Is made by a mortgage lender licensed in this state or licensed under the laws of the  
4 United States.

5 (D) A loan commonly known as a home equity line of credit, in which:

6 (i) The amounts borrowed and the interest and other charges are debited to an account  
7 that is secured by an interest in real estate;

8 (ii) Interest on the account is computed periodically;

9 (iii) The borrower has the right to pay in full at any time without penalty or to pay in  
10 installments that are specified in the loan agreement; and

11 (iv) The lender agrees to permit a borrower from time to time to borrow money, with the  
12 maximum limit on the amount of each borrowing established by the loan agreement.

13 (2) A mortgage banker, mortgage broker or loan originator may not negotiate or make,  
14 or offer to negotiate or make, a negative amortization loan without regard to the borrower's  
15 repayment ability at the time the loan is made, including the borrower's current and rea-  
16 sonably expected income, employment, assets other than the collateral, current obligations  
17 and mortgage related obligations. The mortgage banker, mortgage broker or loan originator  
18 shall verify the income and assets of the borrower that the mortgage banker, mortgage  
19 broker or loan originator relies on to evaluate the borrower's repayment ability. The mort-  
20 gage banker, mortgage broker or loan originator shall evaluate the borrower's repayment  
21 ability and verify the borrower's income and assets in a manner consistent with the re-  
22 quirements of 12 C.F.R. 226.34, as promulgated on the effective date of this 2009 Act.

23 (3) A negative amortization loan may not contain a prepayment penalty beyond the first  
24 24 months after the date on which the loan is made.

25 (4) A creditor may not collect a prepayment penalty on an existing negative amortization  
26 loan in return for or as a consequence of refinancing or providing funds to refinance the  
27 negative amortization loan.

28 **SECTION 3.** (1) A mortgage banker, a mortgage broker or a loan originator shall provide  
29 in writing the materials identified in subsection (2) of this section to a borrower if the  
30 mortgage banker, mortgage broker or loan originator:

31 (a) Communicates or causes to be communicated an advertisement in a language other  
32 than English or otherwise solicits business in a language other than English; and

33 (b) Offers to negotiate or make, or negotiates or makes, a residential mortgage trans-  
34 action in the course of which a substantial portion of the communication with the borrower  
35 that is related to the transaction takes place in a language other than English.

36 (2) A mortgage banker, mortgage broker or loan originator that takes an action de-  
37 scribed in subsection (1) of this section shall provide the following materials to the borrower  
38 in English and in the language other than English in which a substantial portion of the  
39 communication that is related to the transaction takes place:

40 (a) A good faith estimate required under the Real Estate Settlement Procedures Act, 12  
41 U.S.C. 2601 et seq., and under Regulation X, 24 C.F.R. part 3500, as enacted or promulgated  
42 on January 1, 2010;

43 (b) The disclosures related to the transaction that are required under the Truth in  
44 Lending Act, 15 U.S.C. 1601 et seq., and under Regulation Z, 12 C.F.R. part 226, as enacted  
45 or promulgated on the effective date of this 2009 Act; and

1 (c) A statement notifying the borrower that loan documents associated with the trans-  
2 action will be in English and advising the borrower to obtain appropriate assistance with any  
3 necessary translations.

4 (3) The Director of the Department of Consumer and Business Services shall develop and  
5 distribute translated versions of the materials identified in subsection (2) of this section in  
6 the three languages other than English that are most commonly spoken in this state.

7 **SECTION 4.** ORS 59.925 is amended to read:

8 59.925. (1) As used in this section, “mortgage banker transaction” and “mortgage broker trans-  
9 action” mean a transaction in which a person, in order to engage in the transaction, is required to  
10 be licensed as a mortgage banker or a mortgage broker under ORS 59.840 to 59.980.

11 (2) A mortgage banker or mortgage broker is liable as provided in subsection (3) of this section  
12 to any person who suffers any ascertainable loss of money or property, real or personal, in a mort-  
13 gage banker transaction or a mortgage broker transaction if the mortgage banker or mortgage  
14 broker:

15 (a) Transacts business as a mortgage banker or mortgage broker in violation of any provision  
16 of ORS 59.840 to 59.980; or

17 (b) Transacts business as a mortgage banker or mortgage broker by means of an untrue state-  
18 ment of a material fact or an omission to state a material fact necessary in order to make the  
19 statements made, in light of the circumstances under which they are made, not misleading, and who  
20 does not sustain the burden of proof that the person did not know, and in the exercise of reasonable  
21 care could not have known, of the untruth or omission.

22 (3) The person suffering ascertainable loss may recover damages in an amount equal to the  
23 ascertainable loss.

24 (4) A person whose sole function in connection with a transaction is to provide ministerial  
25 functions of escrow, custody or deposit services in accordance with applicable law is liable only if  
26 the person participates or materially aids in the transaction and the plaintiff sustains the burden  
27 of proof that the person knew of the existence of the facts on which liability is based or that the  
28 person’s failure to know of the existence of such facts was the result of the person’s recklessness  
29 or gross negligence.

30 (5) Except as otherwise provided in this subsection **and subsection (10) of this section**, an  
31 action or suit may not be commenced under this section more than three years after the transaction.  
32 An action under this section for a violation under subsection (2)(b) of this section or ORS 59.930  
33 may be commenced within three years after the transaction or two years after the person bringing  
34 the action discovered or should have discovered the facts on which the action is based, whichever  
35 is later, but in no event more than five years after the date of the transaction. Failure to commence  
36 an action on a timely basis is an affirmative defense.

37 (6) A person has a right of action under the bond or irrevocable letter of credit provided in ORS  
38 59.850 if the person:

39 (a) Signs a mortgage banking loan or mortgage loan application; and

40 (b) Has a right of action against a mortgage banker or mortgage broker under this section.

41 (7) Subsection (4) of this section does not limit the liability of any person:

42 (a) For conduct other than in the circumstances described in subsection (4) of this section; or

43 (b) Under any other law.

44 (8) Except as provided in subsection (9) of this section, the court may award reasonable attorney  
45 fees to the prevailing party in an action under this section.

1 (9)(a) The court may not award attorney fees to a prevailing defendant under the provisions of  
2 subsection (8) of this section if the action under this section is maintained as a class action pursuant  
3 to ORCP 32.

4 (b) The court may not award attorney fees to a mortgage banker or mortgage broker  
5 that prevails as a defendant in an action brought under this section in connection with a  
6 residential mortgage transaction if:

7 (A) Before commencing a court action against the mortgage banker or mortgage broker,  
8 the person who alleges that the person has suffered an ascertainable loss sends, before the  
9 expiration of the applicable time limit set forth in subsection (5) of this section, a notice by  
10 registered mail, return receipt requested, that:

11 (i) Includes the name and mailing address of the person or the person's legal represen-  
12 tative, if any;

13 (ii) States that the person might bring a court action under this section against the  
14 mortgage banker or mortgage broker;

15 (iii) Describes the grounds on which the person might base the court action; and

16 (iv) Sets forth the action the person believes the mortgage banker or mortgage broker  
17 must take to remedy each ascertainable loss the person alleges; and

18 (B) The person alleging an ascertainable loss did not bring the action in bad faith or  
19 solely for the purpose of harassment.

20 (10) If the person bringing an action under this section complies with the requirements  
21 of subsection (9)(b) of this section, the time specified in subsection (5) of this section within  
22 which a person may commence the action is extended by 20 days.

23 **SECTION 5.** (1) Sections 2 and 3 of this 2009 Act apply to transactions that occur on or  
24 after the effective date of this 2009 Act.

25 (2) The amendments to ORS 59.925 by section 4 of this 2009 Act apply to court actions  
26 commenced on or after the effective date of this 2009 Act.

27