

B-Engrossed House Bill 2188

Ordered by the Senate June 1
Including House Amendments dated March 27 and Senate Amendments
dated June 1

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.

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 will be relied on to evaluate the
19 borrower's repayment ability. The borrower's repayment ability must be evaluated and the
20 borrower's income and assets must be verified in a manner that is consistent with the re-
21 quirements of 12 C.F.R. 226.34, as promulgated on the effective date of this 2009 Act.

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

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

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

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

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

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. Sections 2 and 3 of this 2009 Act apply to transactions that occur on or after
8 the effective date of this 2009 Act.

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