

House Bill 2188

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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**.

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;

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

25 (iv) Is made by a mortgage lender licensed in this state or licensed or chartered under

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 the laws of the United States.

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

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

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

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

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

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

20 (3) A negative amortization loan may not contain a prepayment penalty beyond the first
21 24 months after the date on which the loan is made.

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

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

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

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

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

37 (a) A good faith estimate required under the Real Estate Settlement Procedures Act, 12
38 U.S.C. 2601 et seq., and under Regulation X, 24 C.F.R. part 3500, as enacted or promulgated
39 on the effective date of this 2009 Act;

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

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

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

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

5 59.925. (1) As used in this section, “mortgage banker transaction” and “mortgage broker trans-
 6 action” mean a transaction in which a person, in order to engage in the transaction, is required to
 7 be licensed as a mortgage banker or a mortgage broker under ORS 59.840 to 59.980.

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

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

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

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

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

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

34 (6) A person has a right of action under the bond or irrevocable letter of credit provided in ORS
 35 59.850 if the person:

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

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

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

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

40 (b) Under any other law.

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

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

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

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

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

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

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

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

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

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

20 **SECTION 5.** **Sections 2 and 3 of this 2009 Act and the amendments to ORS 59.925 by**
21 **section 4 of this 2009 Act apply to transactions that occur on or after the effective date of**
22 **this 2009 Act.**