

House Bill 3238

Sponsored by Representative SCHAUFLER (at the request of United Financial Lobby)

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**.

Authorizes Director of Department of Consumer and Business Services to participate in Nationwide Mortgage Licensing System and Registry. Provides director with authority to regulate mortgage loan originators.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to mortgage loan originators; creating new provisions; amending ORS 59.840, 59.860, 59.865,
3 59.880, 59.900, 59.905, 59.962, 59.967, 59.992 and 725.010; repealing ORS 59.969, 59.970, 59.971,
4 59.972, 59.973, 59.975 and 59.977; and declaring an emergency.

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

6 **SECTION 1. As used in sections 1 to 15 of this 2009 Act:**

7 (1) **"Depository institution" has the meaning given that term in 12 U.S.C. 1813(c).**

8 (2) **"Federal banking agency" means:**

9 (a) **The Board of Governors of the Federal Reserve System;**

10 (b) **The Comptroller of the Currency;**

11 (c) **The Director of the Office of Thrift Supervision in the United States Department of**
12 **the Treasury;**

13 (d) **The National Credit Union Administration Board; and**

14 (e) **The Board of Directors of the Federal Deposit Insurance Corporation.**

15 (3)(a) **"Loan processor" means an individual who, as an employee of, under the super-**
16 **vision of or at the direction or instruction of a mortgage loan originator:**

17 (A) **Receives, collects, distributes and analyzes information necessary to process or**
18 **underwrite a residential mortgage loan; or**

19 (B) **Communicates with a consumer to obtain information necessary to process or**
20 **underwrite a residential mortgage loan.**

21 (b) **"Loan processor" does not include an individual who communicates with a consumer**
22 **for the purpose of offering or negotiating residential mortgage loan terms with the consumer**
23 **or offering counsel or consultation to the consumer concerning residential mortgage loan**
24 **terms or rates.**

25 (4)(a) **"Mortgage loan originator" means an individual who, for compensation or gain:**

26 (A) **Receives an application for a residential mortgage loan from a consumer; or**

27 (B) **Offers or negotiates terms for a residential mortgage loan with a consumer.**

28 (b) **"Mortgage loan originator" does not include:**

29 (A) **An individual who, as an employee or independent contractor, works solely as a loan**
30 **processor;**

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 (B) A real estate licensee, as defined in ORS 696.010; or

2 (C) An individual that:

3 (i) Extends credit solely in connection with a timeshare plan, as defined in 11 U.S.C.
4 101(53D); or

5 (ii) Collects or receives on behalf of a person that holds a note in connection with a
6 residential mortgage loan the borrower's payments of principal, interest and other amounts
7 owed to the person that holds the note, that works with the borrower and the person that
8 holds the note to modify or refinance the residential mortgage loan or that forecloses the
9 residential mortgage loan.

10 (5) "Nationwide Mortgage Licensing System and Registry" means a system that the
11 Conference of State Bank Supervisors and the American Association of Residential Mortgage
12 Regulators maintain to register and license mortgage loan originators.

13 (6) "Nontraditional mortgage" means a mortgage other than a 30-year fixed-rate mort-
14 gage.

15 (7) "Person" means an individual, corporation, trust, association, partnership, joint ven-
16 ture, limited liability company or other business entity.

17 (8) "Registered mortgage loan originator" means an individual who:

18 (a) Is employed by:

19 (A) A depository institution;

20 (B) A subsidiary of a depository institution that is regulated by a federal banking agency;

21 or

22 (C) An institution that is regulated by the Farm Credit Administration;

23 (b) Performs the duties of a mortgage loan originator; and

24 (c) Is registered with and maintains a unique identifier through the Nationwide Mortgage
25 Licensing System and Registry.

26 (9) "Residential mortgage loan" means a loan primarily for personal, family or household
27 use that is secured by a mortgage, deed of trust or equivalent consensual security interest
28 on:

29 (a) A structure or mobile home consisting of one to four family units;

30 (b) An individual unit in a condominium or cooperative; or

31 (c) Real property in this state on which is constructed or on which is intended to be
32 constructed a structure, mobile home, condominium or cooperative.

33 (10) "Unique identifier" means a number or other means of identification that is assigned
34 by or under protocols established by the Nationwide Mortgage Licensing System and Regis-
35 try.

36 **SECTION 2.** (1) Except as provided in subsection (2) of this section, an individual may
37 not engage in business as a mortgage loan originator in this state without first:

38 (a) Obtaining a mortgage loan originator's license under section 4 of this 2009 Act or
39 renewing a mortgage loan originator's license under section 7 of this 2009 Act; and

40 (b) Registering with and obtaining a license and unique identifier from the Nationwide
41 Mortgage Licensing System and Registry.

42 (2) Subsection (1) of this section does not apply to:

43 (a) A registered mortgage loan originator who acts within the scope of the registered
44 mortgage loan originator's employment;

45 (b) An individual who offers or negotiates terms of a residential mortgage loan with or

1 on behalf of the individual's spouse, child, sibling, parent, grandparent, grandchild or a rela-
2 tive in a similar relationship with the individual that is created by law, marriage or adoption;

3 (c) An individual who offers or negotiates terms of a residential mortgage loan that is
4 secured by the individual's principal residence; or

5 (d) An attorney licensed or otherwise authorized to practice law in this state if:

6 (A) The attorney negotiates the terms of a residential mortgage loan as an ancillary
7 matter in the attorney's representation of a client; and

8 (B) The attorney is not compensated by a mortgage banker, mortgage broker, loan origi-
9 inator or lender, or an agent of the mortgage banker, mortgage broker, loan originator or
10 lender.

11 (3) An individual may not engage in business as a loan processor unless:

12 (a) The individual is employed by or is otherwise under the direction or supervision of a
13 mortgage loan originator; or

14 (b) The individual complies with subsection (1) of this section.

15 (4) A loan processor may not represent to the public by means of advertising, business
16 cards, stationery, brochures, signs, rate lists or other promotional items or methods that the
17 loan processor can, will or is authorized to perform the duties of a mortgage loan originator.

18 **SECTION 3.** (1) An applicant for a license to conduct business as a mortgage loan origi-
19 nator shall apply to the Director of the Department of Consumer and Business Services on
20 a form and in a manner that the director prescribes by rule.

21 (2) In connection with an application under this section, an applicant shall apply for and
22 receive a license and unique identifier from the Nationwide Mortgage Licensing System and
23 Registry. As part of the application, the director shall require the applicant to submit to the
24 director or directly to the Nationwide Mortgage Licensing System and Registry:

25 (a) Fingerprints that the Federal Bureau of Investigation, or another government agency
26 that is authorized to receive fingerprints, can use to perform a state, national and interna-
27 tional criminal background check;

28 (b) A summary of the applicant's personal history and experience on a form prescribed
29 by the Nationwide Mortgage Licensing System and Registry;

30 (c) A document that authorizes the Nationwide Mortgage Licensing System and Registry
31 to obtain, with reference to the applicant:

32 (A) A credit report from a consumer reporting agency, as defined in 15 U.S.C. 1681a(f);
33 and

34 (B) Information about administrative, civil or criminal proceedings and findings con-
35 cerning the applicant in any governmental jurisdiction; and

36 (d) Other information the director or the Nationwide Mortgage Licensing System and
37 Registry may require.

38 **SECTION 4.** (1) The Director of the Department of Consumer and Business Services may
39 not issue a mortgage loan originator's license to an applicant unless the director finds, at a
40 minimum, that the applicant:

41 (a) Has applied for and obtained a license from the Nationwide Mortgage Licensing Sys-
42 tem and Registry.

43 (b) Has not had a mortgage loan originator's license revoked in another jurisdiction. For
44 purposes of this paragraph, an applicant's mortgage loan originator's license was not revoked
45 if an order or decision to revoke the license was later rescinded or vacated.

1 (c) Has not been convicted of or pleaded guilty or no contest to a felony in a state, fed-
2 eral, foreign or military court:

3 (A) During a period of seven years before the date the applicant submits an application
4 under section 3 of this 2009 Act; or

5 (B) At any time before the date the applicant submits an application under section 3 of
6 this 2009 Act, if the conviction or plea involved a felony of which an element was an act of
7 fraud, dishonesty, a breach of trust or laundering a monetary instrument. For purposes of
8 this paragraph, a conviction that was later pardoned is not a conviction.

9 (d) Has demonstrated financial responsibility, character and general fitness sufficient to
10 command the confidence of the community and warrant the determination that the applicant
11 will operate honestly, fairly and efficiently within the purposes of sections 1 to 15 of this 2009
12 Act.

13 (e) Has completed the education requirement set forth in section 6 of this 2009 Act and
14 passed a test that meets the standards set forth in section 6 of this 2009 Act.

15 (f) Has posted a surety bond in accordance with the provisions of section 10 of this 2009
16 Act.

17 (2) The director may not:

18 (a) Deny a mortgage loan originator's license to an applicant because of the applicant's
19 credit score; or

20 (b) Use information in a credit report as the sole basis for denying the mortgage loan
21 originator's license.

22 (3) The director shall issue a mortgage loan originator's license to an applicant if:

23 (a) The director is satisfied that the information contained in the application for a
24 mortgage loan originator's license is accurate and complete; and

25 (b) No reason exists under subsection (1) of this section to deny the applicant a mortgage
26 loan originator's license.

27 (4) For purposes of this section, an applicant has demonstrated that the applicant is not
28 financially responsible if, with respect to the applicant's own finances, the applicant:

29 (a) Is subject to:

30 (A) An outstanding judgment, except a judgment that is the result of medical expenses;
31 or

32 (B) An outstanding tax lien or other lien recorded or filed by a government agency;

33 (b) Has been subjected to a foreclosure within the three-year period before the date the
34 applicant submits an application under section 3 of this 2009 Act;

35 (c) Has exhibited in the three-year period before the date the applicant submits an ap-
36 plication under section 3 of this 2009 Act a pattern of delinquencies of 90 days or longer on
37 payments for loans or credit accounts; or

38 (d) Has otherwise demonstrated irresponsibility in financial matters.

39 **SECTION 5.** (1) In the period after the Director of the Department of Consumer and
40 Business Services receives an application for a mortgage loan originator's license under
41 section 3 of this 2009 Act and before the director issues a mortgage loan originator's license
42 under section 4 of this 2009 Act, the director may issue a temporary mortgage loan origina-
43 tor's license to an applicant who:

44 (a) Has completed an application and submitted sufficient information to comply with the
45 requirements set forth in section 3 of this 2009 Act and to provide the director with a basis

1 for making a determination under section 4 of this 2009 Act;

2 (b) Has obtained a license and unique identifier from the Nationwide Mortgage Licensing
3 System and Registry; and

4 (c) Is employed by or is exclusively affiliated by contract with a licensed mortgage loan
5 originator who attests to the director on the applicant's behalf that:

6 (A) The applicant, in the six months before the date the applicant submitted an applica-
7 tion under section 3 of this 2009 Act, has not engaged in business as a mortgage loan origi-
8 nator or did not hold a mortgage loan originator's license issued in another jurisdiction and:

9 (i) The applicant has never had a mortgage loan originator's license denied, suspended
10 or revoked in another jurisdiction;

11 (ii) The director has not suspended, revoked or conditioned a license the applicant held
12 or denied the applicant a license in the five-year period before the date the applicant submits
13 an application under section 3 of this 2009 Act;

14 (iii) The applicant has not been convicted of or pleaded guilty or no contest to a felony
15 in the period described in section 4 (1)(c) of this 2009 Act;

16 (iv) The applicant meets or exceeds requirements set forth in sections 1 to 15 of this 2009
17 Act for obtaining a mortgage loan originator's license; and

18 (v) The licensed mortgage loan originator will be responsible for the applicant's acts
19 during the period in which the applicant has a temporary mortgage loan originator's license;
20 or

21 (B) The applicant, in the six months before the date the applicant submits an application
22 under section 3 of this 2009 Act, has engaged in business as a mortgage loan originator or
23 held a mortgage loan originator's license issued in another jurisdiction and:

24 (i) Has never had a mortgage loan originator's license denied, suspended or revoked in
25 another jurisdiction; and

26 (ii) Has not been convicted of or pleaded guilty or no contest to a felony in the period
27 described in section 4 (1)(c) of this 2009 Act.

28 (2) A license issued under this section expires:

29 (a) On the date the director issues or denies a license under section 4 of this 2009 Act;
30 or

31 (b) One year from the date on which the director issues the temporary mortgage loan
32 originator's license under this section.

33 (3) If the director finds that a licensed mortgage loan originator makes a false or mis-
34 leading statement in an attestation given under subsection (1)(c) of this section or does not
35 give the attestation in good faith, the director may issue an order to prevent the licensed
36 mortgage originator from employing or contracting exclusively with the applicant.

37 **SECTION 6.** (1) An applicant for a mortgage loan originator's license must demonstrate
38 to the Director of the Department of Consumer and Business Services that the applicant:

39 (a) Has completed 20 hours of an approved course of education that, at a minimum, must
40 include:

41 (A) Three hours devoted to federal laws and regulations that apply to residential mort-
42 gage loan origination;

43 (B) Three hours devoted to ethics, with instruction concerning fraud, consumer pro-
44 tection and fair lending; and

45 (C) Two hours devoted to lending standards applicable to nontraditional mortgages; and

1 (b) Passed an approved written test with a score of 75 percent correct or better. The test
2 must measure the applicant's knowledge of:

3 (A) Ethics; and

4 (B) Federal and state laws, regulations and rules that apply to residential mortgage loan
5 origination, including laws, regulations and rules that concern fraud, consumer protection,
6 fair lending and nontraditional mortgages.

7 (2) For purposes of this section:

8 (a) An approved course of education is a course that the Nationwide Mortgage Licensing
9 System and Registry has reviewed and for which the Nationwide Mortgage Licensing System
10 and Registry has approved the contents, provider, instructional standards and means and
11 methods of delivery, using reasonable standards.

12 (b) An approved written test is a test that the Nationwide Mortgage Licensing System
13 and Registry develops and for which the Nationwide Mortgage Licensing System and Registry
14 approves the test provider and method of test administration, using reasonable standards.

15 (3) The director shall accept for the purposes of the requirements set forth in subsection
16 (1) of this section:

17 (a) A test that the Nationwide Mortgage Licensing System and Registry develops for
18 mortgage loan originators who offer a limited and specific range of products and services;
19 and

20 (b) An approved course of education that an applicant completed in another state.

21 (4) This section does not preclude:

22 (a) An applicant's employer or a subsidiary, agent or affiliate of the employer from pro-
23 viding an approved course of education; or

24 (b) An approved test provider from administering an approved test at the business lo-
25 cation of the applicant's employer or an affiliate, subsidiary or agent of the employer or at
26 the business location of a person with which the employer has an exclusive contractual ar-
27 rangement related to mortgage loan origination.

28 (5) An applicant may retake an approved test three consecutive times, provided that each
29 test administration occurs 30 days after a previous test administration. If the applicant fails
30 the approved test three consecutive times, the applicant must wait six months before re-
31 taking the test.

32 **SECTION 7.** (1) The Director of the Department of Consumer and Business Services shall
33 renew a mortgage loan originator's license unless the director finds that:

34 (a) A reason exists under section 4 or 9 of this 2009 Act for the director to decline to
35 renew the mortgage loan originator's license;

36 (b) The licensed mortgage loan originator has failed to pay a fee required to renew the
37 mortgage loan originator's license; or

38 (c) The licensed mortgage loan originator has failed to satisfy the continuing education
39 requirements set forth in section 8 of this 2009 Act, except that the director by rule or order
40 may permit or require the licensed mortgage loan originator to make up a deficiency in
41 continuing education rather than declining to renew the mortgage originator's license.

42 (2)(a) If the licensed mortgage loan originator does not apply to renew the mortgage loan
43 originator's license or if the director declines to renew the mortgage loan originator's li-
44 cense, the license expires at the end of the 12-month term for which the license was in effect.

45 (b) The director by rule may establish a procedure and requirements for reinstating a

1 license that has expired. The procedure and requirements the director establishes must be
 2 consistent with standards established by the Nationwide Mortgage Licensing System and
 3 Registry and must at a minimum provide that an applicant for reinstatement who has al-
 4 lowed the applicant's mortgage loan originator's license to lapse for a period of five or more
 5 years, whether or not the applicant was employed or continued to engage in business as a
 6 mortgage loan originator during the period of the lapse, shall:

7 (A) Demonstrate to the director that the applicant completed the continuing education
 8 requirements set forth in section 8 of this 2009 Act that were required in the year in which
 9 the applicant last held a mortgage loan originator's license; and

10 (B) Pass the approved written test as provided in section 6 of this 2009 Act.

11 **SECTION 8.** (1) A licensed mortgage loan originator each year shall complete at least
 12 eight hours of an approved course of continuing education that, at a minimum, must include:

13 (a) Three hours devoted to federal laws and regulations that apply to residential mort-
 14 gage loan origination;

15 (b) Two hours devoted to ethics, with instruction concerning fraud, consumer protection
 16 and fair lending; and

17 (c) Two hours devoted to lending standards applicable to nontraditional mortgages.

18 (2) For purposes of this section an approved course of continuing education is a course
 19 that the Nationwide Mortgage Licensing System and Registry has reviewed and for which the
 20 Nationwide Mortgage Licensing System and Registry has approved the contents, provider,
 21 instructional standards and means and methods of delivery, using reasonable standards.

22 (3) This section does not preclude a licensed mortgage loan originator's employer or a
 23 subsidiary, agent or affiliate of the employer from providing an approved course of continu-
 24 ing education.

25 (4) The Director of the Department of Consumer and Business Services shall accept for
 26 the purposes of the requirement set forth in subsection (1) of this section an approved course
 27 of continuing education that a licensed mortgage loan originator completed in another state.

28 (5) A licensed mortgage loan originator:

29 (a) May receive credit for a continuing education course only in the year in which the
 30 licensed mortgage loan originator takes the course, unless the director under section 7 of
 31 this 2009 Act permits or requires the mortgage loan originator to make up a deficiency in
 32 continuing education; and

33 (b) May not for the purposes of meeting the requirement set forth in subsection (1) of
 34 this section take the same approved course of continuing education in the same year or in
 35 any two successive years.

36 (6) A licensed mortgage loan originator who is also approved as an instructor for an ap-
 37 proved course of continuing education may receive two hours of credit toward the licensed
 38 mortgage loan originator's own continuing education requirement for each hour of the ap-
 39 proved course of continuing education that the licensed mortgage loan originator teaches.

40 **SECTION 9.** (1) The Director of the Department of Consumer and Business Services may
 41 deny, suspend, revoke or decline to renew a mortgage loan originator's license if:

42 (a) A licensed mortgage loan originator violates a provision of sections 1 to 15 of this 2009
 43 Act or a rule or order the director issues under sections 1 to 15 of this 2009 Act;

44 (b) The director makes a finding under section 4 of this 2009 Act or under section 7 of
 45 this 2009 Act that the director believes justifies a decision to deny or decline to renew a

1 mortgage loan originator's license; or

2 (c) An applicant makes a false statement or a material misstatement of fact on an ap-
 3 plication for a mortgage loan originator's license or a licensed mortgage loan originator
 4 makes a false statement or a material misstatement of fact on an application to renew a
 5 mortgage loan originator's license.

6 (2) The director may order a person that is subject to regulation under sections 1 to 15
 7 of this 2009 Act to:

8 (a) Cease and desist from violating a provision of sections 1 to 15 of this 2009 Act or from
 9 an act or practice related to mortgage loan origination that the director deems harmful to
 10 a consumer or to the public;

11 (b) Stop or suspend business related to mortgage loan origination;

12 (c) Surrender a temporary mortgage loan originator's license issued under section 5 of
 13 this 2009 Act, if the director finds that the license was issued erroneously;

14 (d) Pay restitution to a consumer or another person that the director finds suffered harm
 15 from the person's acts, omissions, practices or operations or as a result of the person's vi-
 16 olation of a provision of sections 1 to 15 of this 2009 Act; or

17 (e) Take or refrain from taking an action the director deems necessary to comply with
 18 sections 1 to 15 of this 2009 Act.

19 (3) The director in accordance with ORS 183.745 may impose a civil penalty in an amount
 20 not to exceed \$25,000 for each separate instance of a violation of or failure to comply with
 21 the provisions of sections 1 to 15 of this 2009 Act or a rule or order the director adopted or
 22 issued under sections 1 to 15 of this 2009 Act.

23 **SECTION 10.** (1) Except as provided in subsection (2) of this section, an applicant for a
 24 mortgage loan originator's license or a licensed mortgage loan originator shall file with the
 25 Director of the Department of Consumer and Business Services a corporate surety bond
 26 running to the State of Oregon in an amount the director specifies by rule or order and that
 27 reflects the value of the mortgage loans that the mortgage loan originator originated or that
 28 the applicant likely will originate. The corporate surety bond must be issued by a corporate
 29 surety or an insured institution, as defined in ORS 706.008, that is authorized to transact
 30 business in this state.

31 (2) A person that employs a mortgage loan originator or another person that is subject
 32 to regulation under sections 1 to 15 of this 2009 Act shall file a corporate surety bond under
 33 subsection (1) of this section that covers the actions of the person's employees or exclusive
 34 agents. A mortgage loan originator who is an employee or exclusive agent of the person is
 35 not required to file a corporate surety bond under subsection (1) of this section if the cor-
 36 porate surety bond the person has filed covers the mortgage loan originator's actions.

37 (3) The director may require a mortgage loan originator to file a new corporate surety
 38 bond if an action is commenced against the corporate surety bond on file with the director.
 39 The mortgage loan originator shall file a new bond immediately if a recovery is obtained
 40 against the bond.

41 **SECTION 11.** (1) The Director of the Department of Consumer and Business Services
 42 may contract with or otherwise agree with the Nationwide Mortgage Licensing System and
 43 Registry, or a person the Nationwide Mortgage Licensing System and Registry designates,
 44 to:

45 (a) Collect and maintain records in connection with an application under section 3 or 7

1 of this 2009 Act;

2 (b) Collect and process application fees or other fees authorized under sections 1 to 15
3 of this 2009 Act and imposed by a government agency or association of government agencies;

4 (c) Serve as a point of contact the director may use to request information from and
5 provide information to the United States Department of Justice, the Federal Bureau of In-
6 vestigation or other government agencies;

7 (d) Apply, abide by and implement standards the Nationwide Mortgage Licensing System
8 and Registry establishes for:

9 (A) Setting or resetting dates for reporting information or renewing a mortgage loan
10 originator's license; and

11 (B) Amending or surrendering a mortgage loan originator's license; and

12 (e) Otherwise participate in the Nationwide Mortgage Licensing System and Registry.

13 (2) The director may agree with the Conference of State Bank Supervisors, the American
14 Association of Residential Mortgage Regulators or other government agencies or associ-
15 ations of government agencies to share and to maintain under subsection (4) of this section
16 the confidentiality or privilege applicable to information or material that:

17 (a) An applicant provides under section 3 of this 2009 Act;

18 (b) A mortgage loan originator provides under section 7 of this 2009 Act; or

19 (c) The director obtains from investigations, inquiries, proceedings, submissions or other
20 sources under the authority of sections 1 to 15 of this 2009 Act.

21 (3) The director shall provide copies of information and material that the director sup-
22 plies to or receives from the Nationwide Mortgage Licensing System and Registry to an ap-
23 plicant for a mortgage loan originator's license under section 3 of this 2009 Act or a licensed
24 mortgage loan originator who applies to renew a license under section 7 of this 2009 Act. The
25 director by rule shall establish a procedure for challenging the accuracy or completeness of
26 the information and materials.

27 (4) Except as provided in subsections (5) and (6) of this section and 12 U.S.C. 5111, infor-
28 mation or material that an applicant, a mortgage loan originator or the director provides or
29 discloses to the Nationwide Mortgage Licensing System and Registry retains the
30 confidentiality or privilege from public disclosure that applies to the information under ORS
31 192.410 to 192.505 or under other applicable state or federal law, including court rules. The
32 confidentiality or privilege applies to the information or material despite disclosure to state
33 or federal agencies with regulatory authority over persons, businesses or activities related
34 to mortgage lending.

35 (5) Subsection (4) of this section does not apply to information or material concerning
36 an applicant's or a mortgage loan originator's employment history or records of discipline
37 and enforcement actions that appear in and are open to public access in the Nationwide
38 Mortgage Licensing System and Registry.

39 (6) The director shall regularly report to the Nationwide Mortgage Lending System and
40 Registry violations of the provisions of sections 1 to 15 of this 2009 Act, enforcement actions
41 against a person subject to sections 1 to 15 of this 2009 Act and other information the di-
42 rector deems necessary to meet the director's obligations under agreements with the Na-
43 tionwide Mortgage Licensing System and Registry.

44 **SECTION 12.** (1) The Director of the Department of Consumer and Business Services, as
45 often as the director deems necessary to carry out the purposes of sections 1 to 15 of this

1 2009 Act, may:

2 (a) Request or require an applicant for a mortgage loan originator’s license or a licensed
 3 mortgage loan originator to produce, for the director’s examination and use, books, ac-
 4 counts, records, files, documents or other information or evidence;

5 (b) Investigate or examine an applicant or a licensed mortgage loan originator and review
 6 the applicant’s or licensed mortgage loan originator’s:

7 (A) History of criminal, civil and administrative proceedings, enforcement actions, ar-
 8 rests or other information related to the applicant’s or licensed mortgage loan originator’s
 9 compliance with state and federal law, rules or regulations; and

10 (B) Personal qualifications, personal history, business experience and financial informa-
 11 tion, including information obtained from credit reports from a consumer reporting agency,
 12 as defined in 15 U.S.C. 1681a(f);

13 (c) Direct, subpoena, examine, compel the attendance of, administer oaths and affirma-
 14 tions to, and request production of books, accounts, records, files, documents or other in-
 15 formation or evidence from witnesses and persons that are subject to regulation under
 16 sections 1 to 15 of this 2009 Act; and

17 (d) Interview and take and preserve testimony concerning business practices and oper-
 18 ations from the applicant’s or licensed mortgage loan originator’s officers, principals, mort-
 19 gage loan originators, employees, agents and customers or independent contractors
 20 associated with the applicant or licensed mortgage loan originator.

21 (2)(a) The director may, with reference to documents, materials or records described in
 22 subsection (1) of this section:

23 (A) Take possession of, sequester, control or restrict access to the documents, materials
 24 or records; or

25 (B) Designate a person to take exclusive charge of the documents, materials or records
 26 in the location in which the documents, materials or records are usually kept.

27 (b) At a time in which the director has taken an action described in paragraph (a) of this
 28 subsection, a person may not, without the director’s permission or a court order, remove
 29 or attempt to remove the documents, materials or records from the director’s possession
 30 or control or from the location in which the documents, materials or records are kept under
 31 the exclusive charge of the person the director designates.

32 (c) A person who owns or has a right to possess or control the documents, materials or
 33 records may have access necessary to conduct the person’s ordinary business, unless the
 34 director reasonably believes that the documents, materials or records have been or are at
 35 risk of alteration or destruction for the purposes of concealing a violation of sections 1 to
 36 15 of this 2009 Act.

37 (3) In carrying out the purposes of this section, the director may:

38 (a) Retain attorneys, accountants or other professionals or specialists to conduct inves-
 39 tigations, audits or examinations or assist in conducting investigations, audits or examina-
 40 tions;

41 (b) Agree with other government agencies or officials to share resources, information,
 42 methods, procedures, documents, records, materials and information obtained in the course
 43 of investigations, audits, examinations and related activities;

44 (c) Purchase, share, use or employ analytical systems, methods or software available
 45 from public or private sources;

1 (d) Accept and rely upon the results of or reports concerning investigations, audits, ex-
2 aminations or proceedings conducted by other government agencies or officials in this state
3 or in other states; and

4 (e) Accept, use and incorporate in the director's findings, reports, orders or other actions
5 audit reports from an independent certified public accountant.

6 (4) The director's authority under this section applies to a person who is subject to reg-
7 ulation under sections 1 to 15 of this 2009 Act, whether or not the person is licensed as a
8 mortgage loan originator.

9 (5) An applicant or licensed mortgage loan originator shall:

10 (a) Make available to the director at the director's request books, accounts, records, files
11 and other documents relating to the applicant's or licensed mortgage loan originator's busi-
12 ness operations and practices; and

13 (b) Prepare, compile and deliver to the director reports, accounting compilations, lists
14 and data concerning loan transactions and other information the director requires to carry
15 out the purposes of sections 1 to 15 of this 2009 Act.

16 (6) A person subject to investigation, audit or examination under this section may not
17 knowingly withhold, abstract, remove, mutilate, destroy or conceal books, accounts, records,
18 computer records, files, documents or other information or evidence that is subject to the
19 director's authority under this section.

20 **SECTION 13.** A person who is subject to regulation under sections 1 to 15 of this 2009
21 Act may not:

22 (1) Employ a scheme, device or artifice, directly or indirectly, to defraud or mislead a
23 customer, borrower, lender or other person;

24 (2) Engage in an unfair or deceptive practice toward another person;

25 (3) Obtain property by fraud or misrepresentation;

26 (4) Solicit or enter into a contract with a borrower the terms of which provide that the
27 person may earn a fee or commission for using the person's best efforts to obtain a resi-
28 dential mortgage loan even if the person does not obtain a residential mortgage loan for the
29 borrower;

30 (5) Solicit business with, advertise or enter into a contract that specifies an interest rate,
31 points or other financing terms unless the rate, points or other financing terms are available
32 at the time in which the person conducts the solicitation, advertises or enters into the con-
33 tract;

34 (6) Conduct or operate a business that requires a mortgage loan originator's license
35 without holding a license issued under section 3, 5 or 7 of this 2009 Act or assist or enable
36 another person who does not have a mortgage loan originator's license to conduct or operate
37 a business that requires a mortgage loan originator's license;

38 (7) Fail to disclose or provide information required under sections 1 to 15 of this 2009 Act
39 or by state or federal laws, rules or regulations;

40 (8) Fail to comply with a provision of sections 1 to 15 of this 2009 Act, a rule adopted by
41 the Director of the Department of Consumer and Business Services or state or federal laws,
42 rules or regulations that apply to a business that is subject to regulation under sections 1
43 to 15 of this 2009 Act;

44 (9) Make in any manner a false or deceptive statement or representation concerning the
45 rates, points or other financing terms or conditions for a residential mortgage loan;

1 (10) Make a false statement negligently in, or omit knowingly or willfully a material fact
 2 from, a report or information the person submits to a government agency or the Nationwide
 3 Mortgage Licensing System and Registry or in connection with an investigation or exam-
 4 ination conducted by the director or a government agency;

5 (11) Make a payment, threat or promise, directly or indirectly, to another person for the
 6 purpose of influencing the other person’s independent judgment concerning a residential
 7 mortgage loan or to an appraiser for the purpose of influencing the appraiser’s independent
 8 judgment concerning the value of property;

9 (12) Charge or collect, attempt to charge or collect or propose or enter into an agreement
 10 in which the person charges or collects a fee that is prohibited under sections 1 to 15 of this
 11 2009 Act;

12 (13) Cause or require a borrower to obtain property insurance in an amount that exceeds
 13 the replacement cost of the property subject to the residential mortgage loan, as determined
 14 by the insurer; or

15 (14) Fail to account truthfully for moneys that belong to a party to a residential mort-
 16 gage loan transaction.

17 **SECTION 14.** (1) A licensed mortgage loan originator shall clearly display the licensed
 18 mortgage loan originator’s unique identifier on a residential mortgage loan application form,
 19 solicitation, advertisement, promotional material or website the licensed mortgage loan
 20 originator uses in connection with the licensed mortgage loan originator’s business.

21 (2) The Director of the Department of Consumer and Business Services by rule may
 22 specify the location, size or other characteristics of the unique identifier that must appear
 23 on the materials described in subsection (1) of this section and the materials on which the
 24 unique identifier must appear.

25 **SECTION 15.** The Director of the Department of Consumer and Business Services shall:

26 (1) Review annually the proposed budget, fees and audited financial statements of the
 27 Nationwide Mortgage Licensing System and Registry and report the results of the director’s
 28 review to the Legislative Assembly;

29 (2) Report annually to the Legislative Assembly concerning the Nationwide Mortgage Li-
 30 censing System and Registry’s operations and compliance with established rules and policies
 31 for safeguarding personal information; and

32 (3) Prepare, publish and publicize not later than May 1 of each calendar year a report
 33 that summarizes test results and demographic information for individuals who took the test
 34 described in section 6 of this 2009 Act in this state in the preceding calendar year.

35 **SECTION 16.** ORS 59.840 is amended to read:

36 59.840. As used in ORS 59.840 to 59.980:

37 [(1) “Director” means the Director of the Department of Consumer and Business Services.]

38 [(2)] (1) “Fraud,” “deceit” and “defraud” are not limited to common-law deceit.

39 [(3)] (2) “License” means a license issued to a mortgage banker or mortgage broker under ORS
 40 59.840 to 59.980.

41 [(4)(a) “Loan originator” means an individual employed by or purporting to act as an agent or
 42 independent contractor for a mortgage banker or mortgage broker that is required to be licensed under
 43 ORS 59.840 to 59.980, with the expectation by the individual of compensation or gain that is determined
 44 by the amount borrowed or the terms and conditions agreed to by the mortgage loan borrower, and
 45 having primary job responsibilities that include negotiating with a borrower or potential borrower for

1 *the purpose of establishing the terms and conditions of a mortgage loan.]*

2 *[(b) "Loan originator" includes a person employed at a location outside this state whose primary*
 3 *job responsibilities include contacting or attempting to contact a borrower or potential borrower within*
 4 *this state through any medium or mode of communication for purposes of providing a mortgage loan*
 5 *within this state.]*

6 *[(c) "Loan originator" does not include an individual whose responsibilities are clerical or admin-*
 7 *istrative functions, including but not limited to gathering information, requesting information, word*
 8 *processing, soliciting general interest in mortgage loans, sending correspondence and assembling*
 9 *files.]*

10 *[(d) "Loan originator" does not include an employee of a mortgage banker that is rated as good*
 11 *or better under the federal rating system in effect on May 1, 2001, for seller-servicers of Federal*
 12 *Housing Administration, Federal Home Loan Mortgage Corporation or Federal National Mortgage*
 13 *Association loans and that has an office within this state at which the mortgage banker maintains*
 14 *complete and current copies of all employment records and other records as required by the Director*
 15 *of the Department of Consumer and Business Services by order or rule, in a format acceptable to the*
 16 *director.]*

17 *[(e) "Loan originator" does not include an insurance producer licensed under ORS 744.052 to*
 18 *744.089 or insurance consultant licensed under ORS 744.002.]*

19 *[(f) "Loan originator" does not include a person or group of persons exempted by rule or order of*
 20 *the director.]*

21 *[(5) (3) "Mortgage banker":*

22 *(a) Means [any] a person [who] that for compensation or in the expectation of compensation:*

23 *(A) Either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage*
 24 *banking loan or a mortgage loan; and*

25 *(B) Services or sells a mortgage banking loan.*

26 *(b) Does not include:*

27 *(A) A financial institution, as defined in ORS 706.008.*

28 *(B)(i) A financial holding company or a bank holding company, as defined in ORS 706.008,*
 29 *holding an institution described in subparagraph (A) of this paragraph;*

30 *(ii) A savings and loan holding company, as defined in [section 408 of the National Housing Act,*
 31 *12 U.S.C. 1730a (1982)] 12 U.S.C. 1467a(a)(1)(D), holding an association described in subparagraph*
 32 *(A) of this paragraph;*

33 *(iii) The subsidiaries and affiliates of the financial holding company, bank holding company or*
 34 *savings and loan holding company; or*

35 *(iv) Subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph,*
 36 *provided that the appropriate statutory regulatory authority is exercising control over or is regu-*
 37 *lating or supervising the persons listed in this subparagraph in [their] the persons' mortgage*
 38 *banking activities in accordance with the purposes of ORS 59.840 to 59.980.*

39 *(C) A person [who] that makes a loan secured by an interest in real estate with the person's*
 40 *own moneys[,] for the person's own investment and [who] that is not engaged in the business of*
 41 *making loans secured by an interest in real estate.*

42 *(D) An attorney licensed in this state who negotiates mortgage banking loans or mortgage loans*
 43 *in the ordinary course of business, unless the business of negotiating mortgage banking loans or*
 44 *mortgage loans constitutes substantially all of the attorney's professional activity.*

45 *(E) A person [who] that, as seller of real property, receives one or more mortgages or deeds of*

1 trust as security for a separate money obligation.

2 (F) An agency of *[any]* a state or of the United States.

3 (G) A person *[who]* **that** receives a mortgage or deed of trust on real property as security for
 4 an obligation payable on an installment or deferred payment basis and arising out of materials fur-
 5 nished or services rendered in the improvement of *[that]* **the** real property or *[any]* a lien created
 6 without the consent of the owner of the real property.

7 (H) A person *[who]* **that** funds a mortgage banking loan or mortgage loan *[which has been*
 8 *originated and processed by a licensee or by an exempt person and who]* **that a licensee or exempt**
 9 **person has originated and processed and that** does not maintain a place of business in this state
 10 in connection with funding mortgage banking loans or mortgage loans, does not directly or indi-
 11 rectly solicit borrowers in this state for the purpose of making mortgage banking loans or mortgage
 12 loans and does not participate in *[the negotiation of]* **negotiating** mortgage banking loans or mort-
 13 gage loans. For the purpose of this subparagraph, “*[negotiation of]* **negotiating** mortgage banking
 14 loans or mortgage loans” does not include setting the terms under which a person may buy or fund
 15 a mortgage banking loan or a mortgage loan **that a licensee or exempt person** originated *[by a*
 16 *licensee or exempt person]*.

17 (I) A nonprofit federally tax exempt corporation certified by the United States Small Business
 18 Administration and organized to promote economic development within this state whose primary
 19 activity consists of providing financing for business expansion.

20 (J) A licensee licensed under ORS chapter 725 or a mortgage broker.

21 (K) A retirement or pension fund.

22 (L) An insurer as defined in ORS 731.106.

23 (M) A court appointed fiduciary.

24 (N) *[Any other]* **A** person designated by rule or order of the Director **of the Department of**
 25 **Consumer and Business Services.**

26 *[(6)]* **(4)** “Mortgage banking loan” means a loan, extension of credit or *[a]* retail sales contract
 27 that is funded exclusively from the mortgage banker’s own resources, *[which]* **that** is directly or
 28 indirectly secured by a mortgage or deed of trust or any lien interest on real estate and *[which]* **that**
 29 is created with the consent of the owner of the real property. For purposes of this subsection, “own
 30 resources” means any of the following:

31 (a) Cash, corporate capital, warehouse credit lines at financial institutions defined in ORS
 32 706.008 or other sources that are liability items of the mortgage banker’s financial statements for
 33 which *[its]* **the mortgage banker’s** assets are pledged;

34 (b) Correspondent contracts between the mortgage banker and a bank, savings bank, trust
 35 company, savings and loan association, credit union, profit sharing or pension trust, a licensee under
 36 ORS chapter 725 or an insurance company; or

37 (c) The mortgage banker’s affiliates’ cash, corporate capital, warehouse credit lines at financial
 38 institutions defined in ORS 706.008 or other sources that are liability items on the affiliates’ finan-
 39 cial statements for which the affiliates’ assets are pledged. As used in this paragraph, “affiliates”
 40 means entities that, directly or indirectly, through one or more intermediaries *[controls]* **control**, are
 41 controlled by or are under common control with the entity specified.

42 *[(7)]* **(5)(a)** “Mortgage broker”[:]

43 *[(a)]* means a person *[who]* **that**:

44 (A) Engages all or part of the time, for the account of others or for the person’s own account,
 45 in the business of selling real estate paper whether as issuer, agent or principal to persons other

1 than persons enumerated in ORS 59.035 (4);

2 (B) Engages all or part of the time, for the account of others or for the person’s own account,
 3 in the business of accepting funds from one or more persons other than persons enumerated in ORS
 4 59.035 (4) for investment in real estate paper; or

5 (C) For compensation, or in the expectation of compensation, either directly or indirectly makes,
 6 negotiates or offers to make or negotiate a mortgage loan.

7 (b) **“Mortgage broker”** does not include:

8 (A) A financial institution, as defined in ORS 706.008.

9 (B)(i) A financial holding company or a bank holding company, as defined in ORS 706.008,
 10 holding an institution described in subparagraph (A) of this paragraph;

11 (ii) A savings and loan holding company, as defined in [section 408 of the National Housing Act,
 12 12 U.S.C. 1730a (1982)] **12 U.S.C. 1467a(a)(1)(D)**, holding an association described in subparagraph
 13 (A) of this paragraph;

14 (iii) The subsidiaries and affiliates of the financial holding company, bank holding company or
 15 savings and loan holding company; or

16 (iv) Subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph,
 17 provided that the appropriate statutory regulatory authority is exercising control over or is regu-
 18 lating or supervising the persons listed in this subparagraph in [their] **the persons’** mortgage bro-
 19 kering activities in accordance with the purposes of ORS 59.840 to 59.980.

20 (C) A person [who] **that** purchases real property and issues an obligation to finance the trans-
 21 action to the seller incidentally to the sale.

22 (D) A real estate licensee as defined in ORS 696.010 who performs services solely incidental to
 23 the practice of professional real estate activity as defined in ORS 696.010, unless the real estate
 24 licensee performs the functions of a mortgage banker or a mortgage broker as defined in this sec-
 25 tion.

26 (E) A person licensed under the provisions of ORS chapter 725 or a mortgage banker.

27 (F) A person [who] **that** makes a loan secured by an interest in real estate with the person’s
 28 own moneys, for the person’s own investment and [who] **that** is not engaged in the business of
 29 making loans secured by an interest in real estate.

30 (G) An attorney licensed in this state who negotiates mortgage loans in the ordinary course of
 31 business, unless the business of negotiating mortgage loans constitutes substantially all of the at-
 32 torney’s professional activity.

33 (H) A person [who] **that**, as a seller of real property, receives one or more mortgages or deeds
 34 of trust as security for a separate money obligation.

35 (I) An agency of [any] a state or of the United States.

36 (J) A person [who] **that** receives a mortgage or deed of trust on real property as security for
 37 an obligation payable on an installment or deferred payment basis and arising out of materials fur-
 38 nished or services rendered in the improvement of [that] **the** real property or [any] a lien created
 39 without the consent of the owner of the real property.

40 (K) A person [who] **that** funds a mortgage loan [which has been originated and processed by a
 41 licensee or by an exempt person and who] **that a licensee or exempt person has originated and**
 42 **processed and that** does not maintain a place of business in this state in connection with funding
 43 mortgage loans, does not directly or indirectly solicit borrowers in this state for the purpose of
 44 making mortgage loans and does not participate in [the negotiation of] **negotiating** mortgage loans.
 45 For the purpose of this subparagraph, “[negotiation of] **negotiating** mortgage loans” does not include

1 setting the terms under which a person may buy or fund a mortgage loan **that a licensee or ex-**
 2 **empt person** originated [*by a licensee or exempt person*].

3 (L) A nonprofit federally tax exempt corporation certified by the United States Small Business
 4 Administration and organized to promote economic development within this state whose primary
 5 activity consists of providing financing for business expansion.

6 (M) A person licensed under ORS 446.691 or 446.696 or a temporary manufactured structure
 7 dealer licensee under ORS 446.701 [*who*] **that** provides services customarily associated with the re-
 8 tail sales of manufactured dwellings, including communication of generally available information
 9 regarding mortgage loans, unless:

10 (i) The person receives from a purchaser a fee or commission as a mortgage broker or mortgage
 11 banker that is disclosed in the sales contract, purchase agreement or applicable federal documents;

12 (ii) For the benefit of a potential purchaser, the person completes a loan application form or
 13 other document that is part of a mortgage banking loan and completes a good faith estimate under
 14 the federal Real Estate Settlement Procedures Act, [(12 U.S.C. 2601 et seq.)];

15 (iii) The person solicits or receives credit information from a prospective purchaser for the
 16 purpose of making credit decisions; or

17 (iv) The person negotiates with a potential purchaser the terms of a mortgage loan including
 18 but not limited to points, interest rates, length of loan or other loan conditions.

19 (N) [*Any other*] **A** person designated by rule or order of the director.

20 [(8)] **(6)** “Mortgage loan” means a loan, extension of credit or retail sales contract, other than
 21 a mortgage banking loan, secured by a mortgage or deed of trust or [*any*] **a** lien interest on real
 22 estate that is created with the consent of the owner of the real estate.

23 [(9)] **(7)** “Residential mortgage transaction” means a transaction in which a mortgage, deed of
 24 trust, purchase money security interest arising under an installment sales contract, or equivalent
 25 consensual security interest is created or retained in property upon which four or fewer residential
 26 dwelling units are planned or situated, including but not limited to individual units or condominiums
 27 and cooperatives. As used in this subsection, “residential dwelling unit” means an improvement de-
 28 signed for residential occupancy.

29 **SECTION 17.** ORS 59.860, as amended by section 1, chapter 38, Oregon Laws 2008, is amended
 30 to read:

31 59.860. (1) Every mortgage banker and mortgage broker shall make and keep such accounts,
 32 correspondence, memoranda, papers, books and other records as the Director of the Department of
 33 Consumer and Business Services by rule or order prescribes. All such records shall be preserved for
 34 five years unless the director by rule prescribes otherwise. The director may examine all such re-
 35 cords within or without this state at any reasonable time or times and may require without
 36 subpoena the production of such records at the office of the director as often as is reasonably nec-
 37 essary.

38 (2) Every mortgage banker and mortgage broker shall file financial reports or other information
 39 as the director by rule or order may require and shall promptly correct any document filed with the
 40 director that is or becomes incomplete or inaccurate in any material respect.

41 (3) On or before May 1 of each year or on a date the director establishes by rule, every mort-
 42 gage banker and mortgage broker shall file a report with the director in a form prescribed by the
 43 director. The report shall contain information the director requires concerning the mortgage bank-
 44 er’s or mortgage broker’s business and operations related to residential mortgage lending during the
 45 preceding calendar year. The information shall include the number and nature of loans originated

1 by **mortgage** loan originators, **as defined in section 1 of this 2009 Act**, that the mortgage banker
2 or mortgage broker employed.

3 (4) The report and any records submitted to the director under this section are exempt from
4 disclosure or production and are confidential as provided under ORS 705.137.

5 (5) Notwithstanding the exemption and confidentiality provisions of subsection (4) of this section,
6 the director may abstract information contained in reports submitted under subsection (3) of this
7 section and may make the abstracted information available for public inspection provided that the
8 abstracted information does not identify a particular mortgage banker or mortgage broker as a
9 source of the information.

10 **SECTION 18.** ORS 59.865 is amended to read:

11 59.865. Except as provided in ORS 59.870, the Director of the Department of Consumer and
12 Business Services may by order deny, suspend, condition or revoke a license [*of a person as a*
13 *mortgage banker or mortgage broker*] if the director finds that the applicant or licensee:

14 (1) Is insolvent, either in the sense that the liabilities of the applicant or licensee exceed the
15 assets of the applicant or licensee or that the applicant or licensee cannot meet the obligations of
16 the applicant or licensee as the obligations mature, or **that the applicant or licensee** is in such
17 financial condition that the applicant or licensee cannot continue in business with safety to the
18 customers of the applicant or licensee.

19 (2) Has engaged in dishonest, fraudulent or illegal practices or conduct in any business or pro-
20 fession or unfair or unethical practices or conduct in connection with the mortgage business.

21 (3) Has willfully or repeatedly violated or failed to comply with [*any*] **a** provision of ORS 59.840
22 to 59.980 or [*any*] **a** rule or order of the director.

23 (4) Has been convicted of a misdemeanor, an essential element of which is fraud, or of a felony.

24 (5) Has filed an application for a license that, as of the date the license was issued, or as of the
25 date of an order [*denying, suspending, conditioning or revoking*] **that denied, suspended, condi-**
26 **tioned or revoked** a license, was incomplete in any material respect or contained [*any*] **a** statement
27 that was, in light of the circumstances under which [*it*] **the statement** was made, false or mislead-
28 ing with respect to [*any*] **a** material fact.

29 (6) Has failed to account to persons interested for [*all*] money or property received in connection
30 with a mortgage loan.

31 (7) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging
32 in or continuing [*any*] **a** conduct or practice [*involving any*] **that involves an** aspect of the mortgage
33 business.

34 (8) Is the subject of an order of the director [*denying, suspending, conditioning or revoking a*]
35 **that denies, suspends, conditions or revokes a** license [*as a mortgage banker or mortgage*
36 *broker*].

37 (9) Is the subject of a United States Postal Service fraud order that is currently effective and
38 was issued within the last five years.

39 (10) Does not have the experience required by ORS 59.850 (2) or (3).

40 (11) Has failed to comply with the requirements of ORS 59.860 to make and keep records pre-
41 scribed by rule or order of the director, to produce such records required by the director or to file
42 [*any*] financial reports or other information the director by rule or order may require.

43 (12) Is the subject of an order of the director [*denying, suspending, conditioning or revoking*] **that**
44 **denies, suspends, conditions or revokes a** license under the provisions of any other law adminis-
45 tered by the director.

1 (13) Is the subject of a cease and desist order entered after notice and opportunity for hearing
 2 and issued by the director within the last five years.

3 (14) Has demonstrated negligence or incompetence in performing *[any]* **an** act for which the
 4 licensee is required to hold a license.

5 *[(15) Has failed to supervise diligently and control the mortgage-related activities of a loan origi-*
 6 *nator employed by the licensee.]*

7 *[(16) Has knowingly misrepresented to the director the training of, examination of or continuing*
 8 *education time earned by a loan originator employed by the licensee.]*

9 *[(17) Has willfully or repeatedly employed persons as loan originators who do not meet the train-*
 10 *ing, education or continuing education requirements for loan originators.]*

11 *[(18) Has failed to notify the director of the termination of a loan originator for failure to comply*
 12 *with state or federal laws, regulations or rules.]*

13 **SECTION 19.** ORS 59.880 is amended to read:

14 59.880. The Director of the Department of Consumer and Business Services *[shall have]* **has**
 15 general supervision and control over *[all loan originators,]* mortgage bankers and mortgage brokers
 16 residing or doing business in this state and engaged in *[any]* **an** activity **that is** subject to the pro-
 17 visions of ORS 59.840 to 59.980. *[All such persons and their records and everything connected with*
 18 *their activities shall be]* **The persons, the persons' records and everything connected with the**
 19 **persons' activities are** subject to examination by the director at any time. The provisions of this
 20 section and of any other section of ORS 59.840 to 59.980 relating to examinations *[shall]* extend to
 21 *[any]* **a** person *[who]* **that** should have been *[reported as a loan originator under ORS 59.969 or]* li-
 22 censed as a mortgage banker or mortgage broker, *[any]* **a** person exempted by rule from *[those]* **the**
 23 definitions **of mortgage banker or mortgage broker** or *[any]* **a** person whose license has expired
 24 or has been withdrawn, canceled, suspended, conditioned or revoked. The director may collect from
 25 *[each such]* **the** person the actual expenses incurred in *[that]* **the** examination.

26 **SECTION 20.** ORS 59.900 is amended to read:

27 59.900. (1) In accordance with this section and ORS chapter 183, the Director of the Department
 28 of Consumer and Business Services may from time to time make, amend and rescind such rules as
 29 are necessary to carry out the provisions of ORS 59.840 to 59.980, including but not limited to rules
 30 governing the activities of *[loan originators,]* mortgage bankers and mortgage brokers and rules
 31 governing the purchase or sale of mortgage banking loans, mortgage loans or real estate paper in
 32 coordination with applicable provisions of ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995
 33 and rules adopted thereunder.

34 (2) *[Any]* **A** financial statement required under ORS 59.840 to 59.980 *[shall]* **must** be prepared
 35 in accordance with generally accepted accounting principles. The director may by rule prescribe:

36 (a) The form and content of financial statements required under ORS 59.840 to 59.980;

37 (b) The circumstances under which consolidated financial statements *[shall]* **must** be filed; and

38 (c) Whether any required financial statements *[shall]* **must** be certified by independent or cer-
 39 tified public accountants.

40 **SECTION 21.** ORS 59.905 is amended to read:

41 59.905. (1) Except as provided in ORS 183.745, upon the entry of an order under ORS 59.840 to
 42 59.980, the Director of the Department of Consumer and Business Services shall promptly give ap-
 43 propriate notice of the order as provided in this subsection. The notice shall state that a hearing
 44 will be held on the order if a written demand for hearing is filed with the director within 20 days
 45 after the date of service of the order. The notice shall be given to:

1 (a) The applicant or licensee with respect to orders entered pursuant to ORS 59.865; **or**

2 [(b) *The loan originator and the licensee employing the loan originator with respect to orders en-*
 3 *tered pursuant to ORS 59.973; or]*

4 [(c) **(b)** *[All] An interested [persons] person* with respect to orders entered pursuant to any
 5 other provision of ORS 59.840 to 59.980.

6 (2) If timely demand for a hearing is filed by a person entitled to notice of the order, the director
 7 shall hold a hearing on the order as provided by ORS chapter 183. In the absence of a timely demand
 8 for a hearing, a person is not entitled to judicial review of the order.

9 (3) After the hearing, the director shall enter a final order vacating, modifying or affirming the
 10 order.

11 (4) The director may enter a final order revoking a license notwithstanding the fact that the
 12 license has expired, if the initial order of revocation was issued prior to expiration of the license
 13 or registration.

14 **SECTION 22.** ORS 59.962 is amended to read:

15 59.962. (1) With the permission of the lender, note owner, note holder or other holder of an in-
 16 terest in a note, a mortgage banker or mortgage broker may service or collect any mortgage bank-
 17 ing loan or mortgage loan in its own name or the name of the lender, note owner, note holder or
 18 other holder of an interest in the note.

19 (2) Except as provided in ORS 59.840 to 59.980, nothing in subsection (1) of this section is in-
 20 tended to grant the Director of the Department of Consumer and Business Services the authority
 21 to regulate the servicing or collection of any mortgage banking loan or mortgage loan by a mort-
 22 gage banker or mortgage broker.

23 (3) As used in this section:

24 (a) "Mortgage banker" has the meaning given that term in ORS 59.840 [(5)(a)] **(3)(a)** but also
 25 includes those persons exempted from the definition of mortgage banker in ORS 59.840 [(5)(b)]
 26 **(3)(b)**.

27 (b) "Mortgage banking loan" has the meaning given that term in ORS 59.840.

28 (c) "Mortgage broker" has the meaning given that term in ORS 59.840.

29 (d) "Mortgage loan" has the meaning given that term in ORS 59.840.

30 (e) "Service or collect any mortgage banking loan or mortgage loan" includes but is not limited
 31 to:

32 (A) Holding documents or written instruments and receiving and disbursing payments according
 33 to the instructions of the parties to the documents or written instruments;

34 (B) Collecting or remitting, or having the right or obligation to collect or remit, for any lender,
 35 note owner, note holder or other holder of an interest in a note or for a mortgage banker's or
 36 mortgage broker's own account, payments, interest, principal and trust items, including but not
 37 limited to hazard insurance and taxes, on a mortgage banking loan or mortgage loan in accordance
 38 with the terms of the loan, and includes loan payment follow-up, delinquency loan follow-up, loan
 39 analysis and any notifications to the borrower that are necessary to enable the borrower to keep
 40 the loan current and in good standing; and

41 (C) Bringing and maintaining any suit or action to collect any amounts owed on a mortgage
 42 banking loan or mortgage loan, including but not limited to the exercise of any contractual, statu-
 43 tory or common law remedies such as injunction, specific performance, judicial or nonjudicial fore-
 44 closure or receivership.

45 **SECTION 23.** ORS 59.967 is amended to read:

1 59.967. (1) The Legislative Assembly finds and declares that:

2 (a) The public interest is served by identifying a **mortgage** loan originator, **as defined in sec-**
 3 **tion 1 of this 2009 Act**, with a specific mortgage banker or mortgage broker; and

4 (b) The public must be protected from the conflicts of interest created when a **mortgage** loan
 5 originator is employed by more than one mortgage lender.

6 (2) A **mortgage** loan originator may not originate loans for more than one mortgage banker,
 7 mortgage broker or other mortgage lender or independent mortgage agency at the same time.

8 **SECTION 24.** ORS 59.992 is amended to read:

9 59.992. (1) Violation of any provision of ORS 59.840 to 59.980 or any rule adopted by the Director
 10 of the Department of Consumer and Business Services under ORS 59.840 to 59.980, except ORS
 11 59.915 (2) [*and 59.975*], is a Class C felony.

12 (2) Violation of ORS 59.915 (2) is a Class A misdemeanor.

13 **SECTION 25.** ORS 725.010 is amended to read:

14 725.010. As used in this chapter:

15 (1)(a) "Broker or facilitator" means a person that conducts a business in which, for a fee or
 16 consideration, the person:

17 (A) Processes, receives or accepts for delivery to a lender an application for a loan, individually
 18 or in conjunction or cooperation with another person;

19 (B) Accepts and delivers to a lender all or most of the proceeds of a payment made in con-
 20 nection with a loan; or

21 (C) Assists in making a loan in a material capacity other than as a lender.

22 (b) "Broker or facilitator" does not include a mortgage broker [*or loan originator, as those terms*
 23 *are*], **as defined in ORS 59.840, a mortgage loan originator, as defined in section 1 of this 2009**
 24 **Act**, or an employee of a licensee.

25 (2) "Consumer finance loan" means a loan or line of credit that is unsecured or secured by
 26 personal or real property and that has periodic payments and terms longer than 60 days.

27 (3) "Licensee" means a person licensed under this chapter.

28 **SECTION 26.** ORS 59.969, 59.970, 59.971, 59.972, 59.973, 59.975 and 59.977 are repealed.

29 **SECTION 27.** (1) Sections 1 to 15 of this 2009 Act and the amendments to ORS 59.840,
 30 59.860, 59.865, 59.880, 59.900, 59.905, 59.962, 59.967, 59.992 and 725.010 by sections 16 to 25 of this
 31 2009 Act and the repeal of ORS 59.969, 59.970, 59.971, 59.972, 59.973, 59.975 and 59.977 by sec-
 32 tion 26 of this 2009 Act become operative January 1, 2010.

33 (2) The Director of the Department of Consumer and Business Services may take any
 34 action before January 1, 2010, that is necessary to enable the director to exercise, on and
 35 after January 1, 2010, all of the duties, functions and powers conferred on the director by
 36 sections 1 to 15 of this 2009 Act and the amendments to ORS 59.840, 59.860, 59.865, 59.880,
 37 59.900, 59.905, 59.962, 59.967, 59.992 and 725.010 by sections 16 to 25 of this 2009 Act.

38 **SECTION 28.** This 2009 Act being necessary for the immediate preservation of the public
 39 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
 40 on its passage.