

**PROPOSED AMENDMENTS TO
SENATE BILL 879**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the
2 line and insert “86A.115, 86A.169, 86A.198, 86A.200, 86A.203, 86A.236 and
3 725.230.”.

4 After line 3, insert:

5 **“SECTION 1. ORS 86A.115 is amended to read:**

6 “86A.115. Except as provided in ORS 86A.118, the Director of the De-
7 partment of Consumer and Business Services may by order deny, suspend,
8 condition or revoke a license if the director finds that the applicant or
9 licensee:

10 “(1)(a) Is insolvent, either [*in the sense that*] **because** the liabilities of the
11 applicant or licensee exceed the assets of the applicant or licensee or [*that*]
12 **because** the applicant or licensee cannot meet the obligations of the appli-
13 cant or licensee as the obligations mature[, *or that the applicant or*
14 *licensee*]; **or**

15 **(b)** Is in such financial condition that the applicant or licensee cannot
16 continue in business with safety to the customers of the applicant or
17 licensee.

18 “(2) Engaged in dishonest, fraudulent or illegal practices or conduct in
19 any business or profession or unfair or unethical practices or conduct in
20 connection with the mortgage business.

21 “(3) Willfully or repeatedly violated or failed to comply with a provision
22 of ORS 86A.095 to 86A.198 or a rule or order of the director.

1 “(4) Failed, in conducting business as a mortgage banker or mortgage
2 broker, to comply with the provisions of:

3 “(a) The Truth in Lending Act, 15 U.S.C. 1601 et seq. and, **for residential**
4 **mortgage loan applications that the applicant or licensee received,**
5 **with** Regulation Z, [12 C.F.R. part 226, as in effect on October 1, 2009] **12**
6 **C.F.R. part 1026, as in effect on the effective date of this 2015 Act;**

7 “(b) The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq.
8 and, **for residential mortgage loan applications that the applicant or**
9 **licensee received, with** Regulation X, [24 C.F.R. part 3500, as in effect on
10 January 1, 2010] **12 C.F.R. part 1024, and Regulation Z, 12 C.F.R. part**
11 **1026, both as in effect on the effective date of this 2015 Act;**

12 “(c) The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq. and Regu-
13 lation B, 12 C.F.R. 202.9, 202.11, 202.12 and 202.14, as in effect on [July 30,
14 2009] **the effective date of this 2015 Act;** or

15 “(d) 12 U.S.C. 5101 et seq. and regulations adopted under 12 U.S.C. 5101
16 et seq., **as in effect on the effective date of this 2015 Act.**

17 “(5) Was convicted of a misdemeanor, an essential element of which is
18 fraud, or of a felony.

19 “(6) Filed an application for a license that, as of the date the license was
20 issued, or as of the date of an order that denied, suspended, conditioned or
21 revoked a license, was incomplete in any material respect or contained a
22 statement that was, in light of the circumstances under which the statement
23 was made, false or misleading with respect to a material fact.

24 “(7) Failed to account to persons interested for money or property **the**
25 **applicant or licensee** received in connection with a mortgage loan.

26 “(8) Is permanently or temporarily enjoined by a court of competent ju-
27 risdiction from engaging in or continuing conduct or a practice that involves
28 an aspect of the mortgage business.

29 “(9) Is subject to an order of the director that denies, suspends, conditions
30 or revokes a license.

1 “(10) Is subject to a United States Postal Service fraud order that is
2 currently effective and was issued within the last five years.

3 “(11) Does not have the experience required by ORS 86A.106 (2) or (3).

4 “(12) Failed to comply with the requirements of ORS 86A.112 to make and
5 keep records prescribed by rule or order of the director, to produce such re-
6 cords [*required by*] the director **required** or to file any financial reports or
7 other information the director by rule or order may require.

8 “(13) Is subject to an order of the director that denies, suspends, condi-
9 tions or revokes a license under any other law the director administers.

10 “(14) Is subject to a cease and desist order the director entered within the
11 previous five years after the applicant or licensee had notice and an oppor-
12 tunity for a hearing.

13 “(15) Demonstrated negligence or incompetence in performing any act for
14 which the licensee [*is required to*] **must** hold a license.

15 “(16) Failed to supervise diligently and control the mortgage-related ac-
16 tivities of a mortgage loan originator the licensee employs.

17 “(17) Knowingly misrepresented to the director the training of, examina-
18 tion of or continuing education time earned by a mortgage loan originator
19 the licensee employs.

20 “(18) Willfully or repeatedly employed individuals as mortgage loan orig-
21 inators who do not meet the training, education or continuing education re-
22 quirements for mortgage loan originators.

23 “(19) Failed to notify the director of the termination of a mortgage loan
24 originator for failure to comply with state or federal laws, regulations or
25 rules.

26 “**SECTION 2.** ORS 86A.169 is amended to read:

27 “86A.169. [*Prior to the closing of any*] **Before** a mortgage loan or [*any*] a
28 mortgage banking loan **closes**, [*the*] a mortgage banker or mortgage broker
29 shall supply the borrower with [*a*] **the** disclosure [*as*] required by the real
30 estate lending provisions of 15 U.S.C. 1601 et seq. and, **for residential**

1 **mortgage loan applications that the mortgage banker or mortgage**
2 **broker receives, as required by Regulation Z, [12 C.F.R. Part 226] 12**
3 **C.F.R. part 1026, as in effect on the effective date of this 2015 Act.**

4 **“SECTION 3.** ORS 86A.198 is amended to read:

5 “86A.198. (1) A mortgage banker, a mortgage broker or a mortgage loan
6 originator shall provide in writing the materials identified in subsection (2)
7 of this section to a borrower if the mortgage banker, mortgage broker or
8 mortgage loan originator:

9 “(a) Communicates or causes to be communicated an advertisement in a
10 language other than English or otherwise solicits business in a language
11 other than English; and

12 “(b) Offers to negotiate or make, or negotiates or makes, a residential
13 mortgage transaction in the course of which a substantial portion of the
14 communication with the borrower that is related to the transaction takes
15 place in the language other than English that was used to communicate the
16 advertisement or make the solicitation.

17 “(2) A mortgage banker, mortgage broker or mortgage loan originator
18 that takes an action described in subsection (1) of this section shall provide
19 the following materials to the borrower in English and in the language other
20 than English in which a substantial portion of the communication that is
21 related to the transaction takes place:

22 “(a) A good faith estimate required under the Real Estate Settlement
23 Procedures Act, 12 U.S.C. 2601 et seq., and, **for residential mortgage loan**
24 **applications that the mortgage banker, mortgage broker or mortgage**
25 **loan originator receives**, under Regulation X, [24 C.F.R. part 3500, as en-
26 acted or promulgated on January 1, 2010] **12 C.F.R. part 1024, and Regu-**
27 **lation Z, 12 C.F.R. part 1026, both as in effect on the effective date**
28 **of this 2015 Act;**

29 “(b) The disclosures related to the transaction that are required under the
30 Truth in Lending Act, 15 U.S.C. 1601 et seq., and, **for residential mortgage**

1 **loan applications that the mortgage banker, mortgage broker or**
2 **mortgage loan originator receives,** under Regulation Z, [12 C.F.R. part
3 226, as enacted or promulgated on January 1, 2010] **12 C.F.R. part 1026, as**
4 **in effect on the effective date of this 2015 Act;** and

5 “(c) A statement notifying the borrower that loan documents associated
6 with the transaction will be in English and advising the borrower to obtain
7 appropriate assistance with any necessary translations.

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

12 In line 4, delete “1” and insert “4”.

13 On page 2, line 30, after “that” insert “the borrower occupies or intends
14 to occupy as the borrower’s residence and has or is intended to have situated
15 on the residential real property”.

16 Delete lines 31 through 34 and insert:

17 “(a) Four or fewer improvements, including mobile homes, that are de-
18 signed for residential use; or

19 “(b) An improvement that consists of condominium units or cooperative
20 units, where only one unit of the improvement secures the loan.”.

21 In line 37, delete “2” and insert “5”.

22 On page 3, line 15, after the semicolon insert “and”.

23 In line 17, delete “and”.

24 Delete line 18.

25 In line 23, delete the semicolon.

26 On page 4, after line 29, insert:

27 **“SECTION 6.** ORS 86A.236 is amended to read:

28 “86A.236. A person who is subject to regulation under ORS 86A.200 to
29 86A.239 in connection with the person’s activities as a mortgage loan origi-
30 nator may not:

1 “(1) Perform an act as a mortgage loan originator in a negligent or in-
2 competent manner;

3 “(2) Employ a device, scheme or artifice to defraud or engage in an act,
4 practice or course of business that operates or would operate as a fraud or
5 deceit;

6 “(3) Knowingly make an untrue statement of a material fact or omit from
7 a statement a material fact that would make the statement not misleading
8 in light of the circumstances under which the person makes the statement;

9 “(4) Make or file or cause to be made or filed with the Director of the
10 Department of Consumer and Business Services a statement, report or docu-
11 ment that the person knows is false in a material respect or matter;

12 “(5) Engage in an unfair or deceptive practice toward another person;

13 “(6) Obtain property by fraud or misrepresentation;

14 “(7) Solicit or enter into a contract with a borrower, the terms of which
15 provide that the person may earn a fee or commission for using the person’s
16 best efforts to obtain a residential mortgage loan even if the person does not
17 obtain a residential mortgage loan for the borrower, except that the terms
18 of the contract may provide that the person may earn an advance fee or re-
19 cover actual expenses that the person incurs;

20 “(8) Solicit, advertise or enter into a contract, the terms of which specify
21 an interest rate, points or other financing terms unless the interest rate,
22 points or other financing terms are available to a prospective borrower at
23 the time the person makes the solicitation or advertisement or enters into
24 the contract;

25 “(9) Conduct or operate a business that requires a mortgage loan
26 originator’s license without holding a license issued under ORS 86A.212 or
27 86A.218 or assist or enable another person who does not have a mortgage
28 loan originator’s license to conduct or operate a business that requires a
29 mortgage loan originator’s license;

30 “(10) Fail to disclose or provide information required under ORS 86A.200

1 to 86A.239 or by state or federal laws, rules or regulations;

2 “(11) Fail to comply with a provision of ORS 86A.200 to 86A.239, a rule
3 adopted by the Director of the Department of Consumer and Business Ser-
4 vices or state or federal laws, rules or regulations that apply to a business
5 that is subject to regulation under ORS 86A.200 to 86A.239;

6 “(12) Fail to conduct business as a mortgage loan originator in compli-
7 ance with the provisions of:

8 “(a) The Truth in Lending Act, 15 U.S.C. 1601 et seq. and, **for residential**
9 **mortgage loan applications the person receives, with** Regulation Z, [*12*
10 *C.F.R. part 226, as in effect on October 1, 2009*] **12 C.F.R. part 1026, as in**
11 **effect on the effective date of this 2015 Act;**

12 “(b) The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq.
13 and, **for residential mortgage loan applications the person receives,**
14 **with** Regulation X, [*24 C.F.R. part 3500, as in effect on January 1, 2010*] **12**
15 **C.F.R. part 1024, and Regulation Z, 12 C.F.R. part 1026, both as in effect**
16 **on the effective date of this 2015 Act;**

17 “(c) The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq. and Regu-
18 lation B, 12 C.F.R. 202.9, 202.11, 202.12 and 202.14, as in effect on [*July 30,*
19 *2009*] **the effective date of this 2015 Act;** or

20 “(d) 12 U.S.C. 5101 et seq. and regulations adopted under 12 U.S.C. 5101
21 et seq., **as in effect on the effective date of this 2015 Act;**

22 “(13) Make, negligently or intentionally, a false or deceptive statement
23 or representation in any manner concerning the rates, points or other fi-
24 nancing terms or conditions for a residential mortgage loan;

25 “(14) Make a false statement negligently in, or omit knowingly or
26 willfully a material fact from, a report or information the person submits to
27 a government agency or the Nationwide Mortgage Licensing System and
28 Registry or in connection with an investigation or examination conducted
29 by the director or a government agency;

30 “(15) Make a payment, threat or promise, directly or indirectly, to another

1 person for the purpose of influencing the other person's independent judg-
2 ment concerning a residential mortgage loan or to an appraiser for the pur-
3 pose of influencing the appraiser's independent judgment concerning the
4 value of property;

5 "(16) Charge or collect, attempt to charge or collect or propose or enter
6 into an agreement in which the person charges or collects a fee that is pro-
7 hibited under ORS 86A.200 to 86A.239;

8 "(17) Cause or require a borrower to obtain property insurance in an
9 amount that exceeds the replacement cost of the property subject to the
10 residential mortgage loan; or

11 "(18) Fail to account truthfully for moneys that belong to a party to a
12 residential mortgage loan transaction.

13 **"SECTION 7.** ORS 725.230 is amended to read:

14 "725.230. (1) The Director of the Department of Consumer and Business
15 Services may revoke a license under this chapter upon 10 days' notice to the
16 licensee stating the contemplated action and in general the grounds for the
17 action and after giving the licensee reasonable opportunity for a hearing, if
18 the director finds that:

19 "(a) The licensee failed to pay the annual license fee or to comply with
20 a demand, ruling or requirement of the director made pursuant to this
21 chapter or, if the licensee is a corporation, to comply with provisions of law
22 that require the licensee to keep the corporation in good standing;

23 "(b) The licensee has violated a provision of this chapter or a rule made
24 by the director under the authority of this chapter;

25 "(c) The licensee employs mortgage loan originators licensed under ORS
26 86A.200 to 86A.239 and failed to:

27 "(A) File with the director and to maintain a corporate surety bond re-
28 quired under ORS 86A.227; or

29 "(B) Certify to the director in a form and manner the director specifies
30 by rule that the licensee has independently verified that every individual the

1 licensee hired or intends to hire as a mortgage loan originator meets the
2 requirements set forth in ORS 86A.186 and 86A.200 to 86A.239;

3 “(d) The licensee, in connection with the activities of a mortgage loan
4 originator:

5 “(A) Failed to maintain a corporate surety bond as provided in ORS
6 86A.227;

7 “(B) Failed to comply with:

8 “(i) The Truth in Lending Act, 15 U.S.C. 1601 et seq. and Regulation Z,
9 [12 C.F.R. part 226, as in effect on October 1, 2009] **12 C.F.R. part 1026, as**
10 **in effect on the effective date of this 2015 Act;**

11 “(ii) The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq.
12 and Regulation X, [24 C.F.R. part 3500, as in effect on January 1, 2010] **12**
13 **C.F.R. part 1024, and Regulation Z, 12 C.F.R. part 1026, both as in effect**
14 **on the effective date of this 2015 Act;**

15 “(iii) The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq. and Reg-
16 ulation B, 12 C.F.R. 202.9, 202.11, 202.12 and 202.14, as in effect on July 30,
17 2009; or

18 “(iv) 12 U.S.C. 5101 et seq. and regulations adopted under 12 U.S.C. 5101
19 et seq.;

20 “(e) The licensee employed a device, scheme or artifice to defraud or en-
21 gage in an act, practice or course of business that operates or would operate
22 as a fraud or deceit;

23 “(f) The licensee knowingly made an untrue statement of a material fact
24 or omitted from a statement a material fact that would make the statement
25 not misleading in light of the circumstances under which the licensee made
26 the statement;

27 “(g) The licensee made or filed or caused to be made or filed with the
28 director a statement, report or document that the licensee knew was false in
29 a material respect or matter; or

30 “(h) A fact or condition exists that, if the fact or condition had existed

1 at the time the licensee originally applied for the license, clearly would have
2 warranted the director in refusing originally to issue the license.

3 “(2) The director, without notice or hearing, may suspend a license issued
4 under this chapter for a period not exceeding 30 days, pending investigation.

5 “(3) The director may revoke or suspend only the particular license with
6 respect to which grounds for revocation or suspension may occur or exist,
7 or, if the director finds that the grounds for revocation or suspension are
8 of general application to all or more than one of the licensee’s offices, the
9 director may revoke or suspend all the licenses or such number of the li-
10 censes issued to the licensee as the grounds for revocation or suspension
11 apply to, as the case may be.”

12
