

# DRAFT

## SUMMARY

Requires mortgage banker and mortgage broker to file report concerning residential mortgage lending activities by May 1 of each year. Punishes failure to file report with fine of \$100 per day.

Specifies contents of and retention requirements for registry of loan originators.

Permits Director of Department of Consumer and Business Services to suspend or bar loan originator from employment for violating statute or rule or order of director.

Prohibits loan originator from performing act as loan originator in negligent or incompetent manner. Prohibits mortgage banker or mortgage broker from employing person as loan originator if person is suspended or prohibited from employment as loan originator or if employment violates condition or order of director, state or federal agency or court.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to regulation of loan originators; creating new provisions; amending  
3 ORS 59.860, 59.969, 59.971, 59.973 and 59.996; and declaring an emergency.

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

5 **SECTION 1.** ORS 59.860 is amended to read:

6 59.860. (1) Every mortgage banker and mortgage broker shall make and  
7 keep such accounts, correspondence, memoranda, papers, books and other  
8 records as the Director of the Department of Consumer and Business Ser-  
9 vices by rule or order prescribes. All such records shall be preserved for five  
10 years unless the director by rule prescribes otherwise. The director may ex-  
11 amine all such records within or without this state at any reasonable time  
12 or times and may require without subpoena the production of such records  
13 at the office of the director as often as is reasonably necessary.

1 (2) Every mortgage banker and mortgage broker shall file financial re-  
2 ports or other information as the director by rule or order may require and  
3 shall promptly correct any document filed with the director that is or be-  
4 comes incomplete or inaccurate in any material respect.

5 (3) **On or before May 1 of each year or on a date the director es-**  
6 **tablishes by rule, every mortgage banker and mortgage broker shall**  
7 **file a report with the director in a form prescribed by the director. The**  
8 **report shall contain information the director requires concerning the**  
9 **mortgage banker's or mortgage broker's business and operations re-**  
10 **lated to residential mortgage lending during the preceding calendar**  
11 **year. The information shall include the number and nature of loans**  
12 **originated by loan originators that the mortgage banker or mortgage**  
13 **broker employed.**

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

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

23 **SECTION 2.** ORS 59.969 is amended to read:

24 59.969. (1) A mortgage banker or mortgage broker must provide to the  
25 Director of the Department of Consumer and Business Services, and keep  
26 current, a list of loan originators employed by the banker or broker. The  
27 banker or broker shall notify the director within 30 days of the employment  
28 or termination of employment of a loan originator.

29 (2) *[An applicant for issuance of]* **A person that applies for a license**  
30 **to conduct business as a mortgage banker or mortgage broker** *[license]*  
31 **under ORS 59.850 or that applies to renew a license under ORS 59.855**

1 shall include with the application evidence acceptable to the director that  
2 each individual the [applicant] person has hired or intends to hire as a loan  
3 originator has:

4 (a)(A) Successfully completed an entry-level training course approved or  
5 provided by an organization certified by the director as described in ORS  
6 59.977; and

7 (B) Passed an examination, approved or provided by an organization de-  
8 scribed in ORS 59.977, on laws and rules relating to mortgage lending in this  
9 state; or

10 (b) If the individual has been employed as a loan originator for two or  
11 more years in this state, completed continuing education as required by the  
12 director pursuant to ORS 59.975.

13 [(3) A mortgage banker or mortgage broker that applies for renewal of a  
14 license pursuant to ORS 59.855 shall include with the application evidence  
15 acceptable to the director that each individual employed by the banker or bro-  
16 ker as a loan originator has:]

17 [(a)(A) Successfully completed an entry-level training course approved or  
18 provided by an organization certified by the director as described in ORS  
19 59.977; and]

20 [(B) Passed an examination, approved or provided by an organization de-  
21 scribed in ORS 59.977, on laws and rules relating to mortgage lending in this  
22 state; or]

23 [(b) If the individual has been employed as a loan originator for two or  
24 more years in this state, completed continuing education as required by the  
25 director pursuant to ORS 59.975.]

26 [(4)] (3) [An applicant for issuance of] **A person that applies for a li-**  
27 **cence to conduct business as** a mortgage banker or mortgage broker [li-  
28 **cense]** under ORS 59.850 **or that applies to renew a license under ORS**  
29 **59.855** shall include with the application evidence acceptable to the director  
30 that each individual the [applicant] person has hired or intends to hire who  
31 is an insurance producer or insurance consultant licensed under ORS 744.002

1 and who is a full-time loan originator as defined in ORS 59.970 has:

2 (a)(A) Successfully completed an entry-level training course approved or  
3 provided by an organization certified by the director as described in ORS  
4 59.977; and

5 (B) Passed an examination, approved or provided by an organization de-  
6 scribed in ORS 59.977, on laws and rules relating to mortgage lending in this  
7 state; or

8 (b) If the individual has been employed as a full-time loan originator for  
9 two or more years in this state, completed continuing education as required  
10 by the director pursuant to ORS 59.975.

11 *[(5) A mortgage banker or mortgage broker that applies for renewal of a  
12 license pursuant to ORS 59.855 shall include with the application evidence  
13 acceptable to the director that each individual employed by the mortgage  
14 banker or mortgage broker as a loan originator who is an insurance producer  
15 or insurance consultant licensed under ORS 744.002 and who is a full-time  
16 loan originator as defined in ORS 59.970 has:]*

17 *[(a)(A) Successfully completed an entry-level training course approved or  
18 provided by an organization certified by the director as described in ORS  
19 59.977; and]*

20 *[(B) Passed an examination, approved or provided by an organization de-  
21 scribed in ORS 59.977, on laws and rules relating to mortgage lending in this  
22 state; or]*

23 *[(b) If the individual has been employed as a full-time loan originator for  
24 two or more years in this state, completed continuing education as required  
25 by the director pursuant to ORS 59.975.]*

26 **[(6)] (4)** An applicant under subsection (2)[,] **or** (3)[, (4) or (5)] of this  
27 section shall, at the time of application, certify that the applicant has con-  
28 ducted criminal records checks required under ORS 59.970 and 59.972 and:

29 (a) Certify that, to the best of the applicant's belief, no individual the  
30 applicant employs or intends to employ as a loan originator has engaged in  
31 conduct that would constitute a violation of ORS 59.967 (2) or 59.971; or

1 (b) Note any exceptions to the certification made in paragraph (a) of this  
2 subsection. An applicant is not subject to an action at law for making a  
3 notation under this paragraph in good faith.

4 [(7)] (5) Except as provided in [subsections (4) and (5)] **subsection (3)** of  
5 this section, a mortgage banker or mortgage broker may voluntarily report  
6 to the director regarding employees who would qualify as loan originators  
7 if not exempted under ORS 59.840 (4). Voluntary reporting by a banker or  
8 broker under this subsection does not make the reported employees subject  
9 to training, examination or continuing education requirements or other laws  
10 governing loan originators.

11 **(6) The director shall keep for not less than 10 years, and shall**  
12 **maintain a registry of loan originators with information derived from,**  
13 **records of:**

14 **(a) Notifications filed under subsection (1) of this section;**

15 **(b) Exceptions to certifications under subsection (4)(b) of this sec-**  
16 **tion;**

17 **(c) Complaints the director has determined are justified under ORS**  
18 **59.973; and**

19 **(d) Actions taken in accordance with the provisions of ORS 59.973.**

20 *[(8) The director shall keep records that include notifications filed under*  
21 *subsection (1) of this section and exceptions to certifications under subsection*  
22 *(6) of this section. The director shall retain the records for a period of not less*  
23 *than three years. The director shall keep for 10 years a record of any complaint*  
24 *against a loan originator that has been determined to be justified pursuant to*  
25 *ORS 59.973.]*

26 [(9)] (7) Notwithstanding subsections (1) to [(5)] (3) of this section and  
27 ORS 59.865 (17), 59.970, 59.971 (1)(d) and 59.975, the director, by rule, may  
28 waive any training, examination or continuing education requirement for a  
29 loan originator for a period not to exceed six months after the individual  
30 begins or resumes employment as a loan originator.

31 **SECTION 3.** ORS 59.971 is amended to read:

1 59.971. (1) A person employed by a mortgage banker or mortgage broker  
2 as a loan originator may not:

3 (a) Engage in dishonest, fraudulent or illegal practices or conduct in any  
4 business or profession or engage in unfair or unethical practices or conduct  
5 in connection with the mortgage business.

6 (b) Willfully or repeatedly violate or fail to comply with a provision of  
7 ORS 59.840 to 59.980 or a rule or order of the Director of the Department  
8 of Consumer and Business Services.

9 (c) Fail to account to persons interested for all money or property re-  
10 ceived in connection with a mortgage loan.

11 (d) Fail to meet the training, education or continuing education require-  
12 ments for loan originators.

13 **(e) Perform an act as a loan originator in a negligent or incompe-**  
14 **tent manner.**

15 (2) A person may not be employed by a mortgage banker or mortgage  
16 broker as a loan originator as defined in ORS 59.840 or 59.970 if:

17 (a) The person has been convicted of any crime or category of crime  
18 specified by the director by rule[.];

19 **(b) The person is suspended or has been prohibited from employ-**  
20 **ment as a loan originator under ORS 59.973 (5)(c);**

21 **(c) The employment violates any conditions imposed under ORS**  
22 **59.973 (5)(c); or**

23 **(d) The employment violates an order issued by the director, a state**  
24 **or federal agency or a court of competent jurisdiction.**

25 **SECTION 4.** ORS 59.973 is amended to read:

26 59.973. (1) If the Director of the Department of Consumer and Business  
27 Services receives a complaint against a loan originator for a violation of  
28 ORS [59.967 (2) or 59.971] **59.840 to 59.980**, the director may notify the loan  
29 originator and the mortgage banker or mortgage broker employing the loan  
30 originator.

31 (2) The director may investigate a complaint against a loan originator.

1 Upon the conclusion of the investigation, the director shall promptly notify  
2 the loan originator and the mortgage banker or mortgage broker employing  
3 the loan originator of the director's proposed determination regarding the  
4 complaint.

5 (3) Any hearing on a complaint must be conducted as provided by rules  
6 of the director and pursuant to ORS chapter 183.

7 (4) If the director determines, after opportunity for hearing, that a com-  
8 plaint is justified, the director shall note the complaint **and any action**  
9 **taken** in the records kept pursuant to ORS 59.969 [(8)] (6). [*For a violation*  
10 *of ORS 59.967 (2) or 59.971, the director may*]

11 (5) **The director, after finding that a loan originator has violated a**  
12 **provision of ORS 59.840 to 59.980 or a rule or order of the director, may:**

13 (a) Impose requirements for supervision and remedial education of the  
14 loan originator[.];

15 (b) Assess civil penalties against the loan originator as provided in ORS  
16 59.996;

17 (c) **Suspend or permanently prohibit the loan originator from em-**  
18 **ployment as a loan originator or place conditions on the loan origina-**  
19 **tor's employment; or**

20 (d) Refer the matter for criminal prosecution pursuant to ORS 59.992.

21 **SECTION 5.** ORS 59.996 is amended to read:

22 59.996. (1) In addition to all other penalties and enforcement provisions  
23 provided by law, any person who violates or who procures, aids or abets in  
24 the violation of any provision of ORS 59.840 to 59.980 or any rule or order  
25 of the Director of the Department of Consumer and Business Services shall  
26 be subject to a penalty of not more than \$5,000 for every violation, which  
27 shall be paid to the General Fund of the State Treasury.

28 (2) **Notwithstanding subsection (1) of this section, a person who fails**  
29 **to submit a report required under ORS 59.860 (3) on the date specified**  
30 **is subject to a penalty of not more than \$100 per day for each day after**  
31 **the specified date during which the failure continues.**

1        [(2)] (3) Every violation is a separate offense and, in the case of a con-  
2        tinuing violation, each day's continuance is a separate violation, but the  
3        maximum penalty for any continuing violation shall not exceed \$20,000 for  
4        each offense.

5        [(3)] (4) Civil penalties under this section shall be imposed as provided  
6        in ORS 183.745.

7        **SECTION 6.** (1) The amendments to ORS 59.860, 59.969, 59.971, 59.973  
8        and 59.996 by sections 1 to 5 of this 2008 Act become operative May 1,  
9        2008, and apply to a person licensed as a mortgage banker or mortgage  
10       broker, to a person applying to become a licensed mortgage banker  
11       or mortgage broker and to a person employed as a loan originator on  
12       or after May 1, 2008.

13       (2) The Director of the Department of Consumer and Business Ser-  
14       vices may take any action before the operative date set forth in sub-  
15       section (1) of this section that is necessary to enable the director to  
16       exercise, on and after the operative date, all the duties, functions and  
17       powers conferred on the director by the amendments to ORS 59.860,  
18       59.969, 59.971, 59.973 and 59.996 by sections 1 to 5 of this 2008 Act.

19       **SECTION 7.** This 2008 Act being necessary for the immediate pres-  
20       ervation of the public peace, health and safety, an emergency is de-  
21       clared to exist, and this 2008 Act takes effect on its passage.

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