

**A-Engrossed**  
**House Bill 3603**

Ordered by the House February 20  
Including House Amendments dated February 20

Sponsored by COMMITTEE ON ELECTIONS, ETHICS AND RULES (at the request of House Interim Committee on Elections, Ethics and Rules)

**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.

*[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.]*

**Specifies circumstances in which lender may charge prepayment penalty for subprime mortgage or nontraditional mortgage. Provides that prepayment penalties included in mortgage agreements in other than specified circumstances are void and unenforceable. Specifies timing and contents of disclosures lender must make to borrower. Requires lender to make additional disclosure to borrower if terms in initial disclosure change. Requires mortgage terms to be same as terms last disclosed.**

**Provides rulemaking, examination, investigation and enforcement powers to Director of Department of Consumer and Business Services.**

**Declares emergency, effective on passage.**

**A BILL FOR AN ACT**

1  
2 Relating to loans secured by real estate; creating new provisions; amending ORS 59.850, 59.880 and  
3 706.544; and declaring an emergency.

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

5  
6 **SHORT TITLE**

7  
8 **SECTION 1. Sections 1 to 8 of this 2008 Act shall be known and may be cited as the Re-**  
9 **sponsible Mortgage Lending Act.**

10  
11 **DEFINITIONS**

12  
13 **SECTION 2. As used in sections 2 to 4 of this 2008 Act:**

14 (1) "Annual percentage rate" means the annual percentage rate defined in and calculated  
15 according to the federal Truth in Lending Act, 15 U.S.C. 1601 et seq., and regulations adopted  
16 thereunder.

17 (2)(a) "Lender" means:

18 (A) A mortgage banker or mortgage broker, as those terms are defined in ORS 59.840;

**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 person licensed under the provisions of ORS chapter 725;

2 (C) A credit union, as defined in ORS 723.006;

3 (D) A banking institution, as defined in ORS 706.008; or

4 (E) A state bank, as defined in ORS 706.008.

5 (b) "Lender" does not include:

6 (A) A federal bank or a national bank, as those terms are defined in ORS 706.008, or an  
7 operating subsidiary of a federal bank or a national bank;

8 (B) A federal credit union or an operating subsidiary of a federal credit union; or

9 (C) A financial institution subject to exclusive regulation or supervision by a federal  
10 agency.

11 (3)(a) "Mortgage" means a debt that is secured by a mortgage or a trust deed on real  
12 property in this state upon which is or will be located a structure or structures intended for  
13 occupancy by one to four families and by the borrower as a principal residence.

14 (b) "Mortgage" does not include:

15 (A) A debt incurred to finance the construction of a residential dwelling on real property  
16 in this state; or

17 (B) A debt the borrower incurs that is secured by real property the borrower owns, but  
18 for which repayment is not due until the borrower dies, sells the property or no longer uses  
19 the property as a primary residence.

20 (4) "Mortgage agreement" means the contract, promissory note, trust deed or other ev-  
21 idence of security and all related agreements, documents and understandings that specify the  
22 terms under which the borrower is obligated to repay the mortgage and that form the basis  
23 for the lender's and borrower's legal duties in connection with the mortgage.

24 (5) "Negative amortization" means an increase in the principal of a mortgage that occurs  
25 because a borrower pays less than the amount of principal and interest that would be due  
26 in substantially equal regularly scheduled payments calculated to reduce the mortgage  
27 amount to zero in a period of time specified in the mortgage agreement.

28 (6) "Nontraditional mortgage" means a debt that is secured by a mortgage or trust deed  
29 on real property in this state, upon which is or will be located a structure or structures in-  
30 tended for occupancy by one to four families and by the borrower as a principal residence,  
31 and that is:

32 (a) A mortgage on which, for a period of time specified in the mortgage agreement, a  
33 borrower may pay in a regularly scheduled payment only the interest due, or an interest-only  
34 mortgage that the Director of the Department of Consumer and Business Services identifies  
35 by rule as a nontraditional mortgage;

36 (b) A payment option adjustable rate mortgage; or

37 (c) A mortgage that the director identifies by rule as a nontraditional mortgage and:

38 (A) That allows for negative amortization;

39 (B) That features an introductory interest rate; or

40 (C) For which the lender qualifies the borrower with reduced documentation.

41 (7) "Payment option adjustable rate mortgage" means a mortgage that allows the bor-  
42 rower, during any period in which a regularly scheduled payment is due, to pay one of a  
43 number of optional amounts, including but not limited to:

44 (a) A minimum payment that is less than the interest accruing on the mortgage and that  
45 results in negative amortization;

1 (b) An interest-only payment that does not contribute toward amortizing the mortgage  
2 principal but that does not result in negative amortization because the lender requires the  
3 borrower, after a specified period of time or at the point at which the mortgage principal  
4 reaches a specified negative amortization cap, to make payments that will fully amortize the  
5 outstanding mortgage balance over the remaining term of the mortgage; or

6 (c) A payment of principal and interest that will fully amortize the amount of the mort-  
7 gage.

8 (8) "Subprime mortgage" means a mortgage the director identifies by rule as a subprime  
9 mortgage and for which the annual percentage rate, exclusive of any discount points a bor-  
10 rower pays, differs from the yield on securities of comparable maturity issued by the United  
11 States Treasury by:

12 (a) Three or more percentage points for first-lien mortgages, except first-lien mortgages  
13 secured by a manufactured dwelling, as defined in ORS 446.003, in which case the difference  
14 is 3.5 percentage points or more; or

15 (b) Five or more percentage points for subordinate-lien mortgages, except subordinate-  
16 lien mortgages secured by a manufactured dwelling, as defined in ORS 446.003, in which case  
17 the difference is 5.5 percentage points or more.

18  
19 **PREPAYMENT**

20  
21 **SECTION 3.** (1) The terms of a subprime mortgage or nontraditional mortgage that a  
22 lender offers or originates may impose a prepayment penalty for a full or partial repayment  
23 of principal made within two years after the closing date for the mortgage or during a period  
24 that ends 60 days before the first scheduled adjustment of the interest rate applicable to the  
25 mortgage, whichever date occurs first. Any terms in a mortgage agreement that impose a  
26 penalty for a prepayment in circumstances other than those described in this section are  
27 void and unenforceable.

28 (2) This section does not apply to a mortgage offered or originated under a federal pro-  
29 gram that requires the mortgage agreement to include a prepayment penalty.

30  
31 **REQUIRED DISCLOSURES**

32  
33 **SECTION 4.** (1) At the time a lender must provide a borrower with a good faith estimate  
34 under the provisions of the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2604,  
35 a lender that offers or originates a subprime mortgage or nontraditional mortgage shall  
36 disclose to the borrower in nontechnical language:

37 (a) The amount of the initial payment for the mortgage;

38 (b) The annual percentage rate applicable to the mortgage;

39 (c) The interest rate applicable to the mortgage and whether the interest rate is subject  
40 to change;

41 (d) The amount of the highest potential regularly scheduled payment for the mortgage  
42 and the date on which or by which the payment may reach the highest potential amount, to  
43 the extent that the highest potential regularly scheduled payment can be calculated for the  
44 mortgage;

45 (e) The amount of any compensation or payment made under the mortgage agreement

1 to a person that originates, negotiates or brokers the mortgage;

2 (f) The amount and timing of any rate adjustments that might occur under the mortgage  
3 agreement; and

4 (g) Such other information as the Director of the Department of Consumer and Business  
5 Services may require by rule.

6 (2) The director by rule may prescribe the form and contents of the disclosures required  
7 under this section.

8 (3) If the amounts, rates or information disclosed under subsection (1) of this section  
9 change, the lender, at least three days before the mortgage closes, shall provide the borrower  
10 with:

11 (a) A new disclosure in substantially the same form as the disclosure required under  
12 subsection (1) of this section that shows the new amounts, rates and information that will  
13 apply to the subprime mortgage or nontraditional mortgage that the lender is entering into  
14 with the borrower;

15 (b) The differences between the amounts, rates and information disclosed under sub-  
16 section (1) of this section and the amounts, rates and information disclosed under this sub-  
17 section; and

18 (c) A statement of reasons for the changes.

19 (4) The amounts, rates and information set forth in the mortgage terms and in the  
20 mortgage agreement must be:

21 (a) The amounts, rates and information disclosed under subsection (1) of this section; or

22 (b) The amounts, rates and information disclosed under subsection (3) of this section if  
23 the lender has made a disclosure under subsection (3) of this section.

24  
25 **RULEMAKING AND ENFORCEMENT**

26  
27 **SECTION 5.** The Director of the Department of Consumer and Business Services may  
28 adopt rules to administer and enforce sections 2 to 4 of this 2008 Act.

29 **SECTION 6.** (1) The Director of the Department of Consumer and Business Services may  
30 make such public or private examinations and investigations within or outside this state as  
31 the director deems necessary to:

32 (a) Determine whether a person has violated, is violating or is about to violate sections  
33 2 to 4 of this 2008 Act, a rule adopted under section 5 of this 2008 Act or an order of the di-  
34 rector to enforce a provision of sections 2 to 4 of this 2008 Act;

35 (b) Enforce sections 2 to 4 of this 2008 Act; or

36 (c) Aid the adoption of rules under section 5 of this 2008 Act.

37 (2) For the purpose of an examination or investigation under subsection (1) of this sec-  
38 tion, the director may administer oaths and affirmations, subpoena witnesses, compel the  
39 witnesses to attend, take evidence and require the production of books, papers, correspond-  
40 ence, memoranda, agreements or other documents or records that the director deems rele-  
41 vant or material to the inquiry. Each witness who appears before the director under a  
42 subpoena shall receive the fees and mileage provided for witnesses in ORS 44.415 (2).

43 (3) If a person fails to comply with a subpoena or a party or witness refuses to testify  
44 on any matter, the judge of the circuit court or of any county, on the application of the di-  
45 rector, shall compel obedience by proceedings for contempt as in the case of disobedience of

1 the requirements of a subpoena issued from the court or a refusal to testify before the court.

2 (4) The director may require or permit a person to file a statement in writing, under oath  
3 or otherwise as the director determines, as to all the facts and circumstances concerning the  
4 matter to be examined or investigated.

5 (5) The director may publish information concerning any violation of sections 2 to 4 of  
6 this 2008 Act, any rule adopted under section 5 of this 2008 Act or any order of the director  
7 to enforce a provision of sections 2 to 4 of this 2008 Act.

8 (6) If the director has reason to believe that a person has violated, is violating or is about  
9 to violate sections 2 to 4 of this 2008 Act, the director, subject to section 8 of this 2008 Act,  
10 may issue an order directed to the person to cease and desist from the violation or threat-  
11 ened violation.

12 **SECTION 7.** (1) If the Director of the Department of Consumer and Business Services  
13 has reasonable cause to believe that a person has violated, is violating, is about to violate,  
14 or has knowingly aided or abetted a violation of, sections 2 to 4 of this 2008 Act, a rule  
15 adopted under section 5 of this 2008 Act or an order of the director to enforce a provision  
16 of sections 2 to 4 of this 2008 Act, the director may:

17 (a) Impose a civil penalty as provided in ORS 183.745 of not more than \$5,000 for each  
18 violation, provided that in the case of a continuing violation, each day's continuance is a  
19 separate violation, but the maximum penalty for a continuing violation may not exceed  
20 \$20,000; or

21 (b) Bring suit in the name and on behalf of the State of Oregon in the circuit court of  
22 any county to enjoin the violation and to enforce sections 2 to 4 of this 2008 Act or any rule  
23 adopted or order issued thereunder.

24 (2) Upon application supported by a proper showing, a court shall grant a permanent or  
25 temporary injunction, restraining order or writ of mandamus to prevent a person from vio-  
26 lating sections 2 to 4 of this 2008 Act, a rule adopted under section 5 of this 2008 Act or an  
27 order of the director to enforce a provision of sections 2 to 4 of this 2008 Act.

28 (3) The court may fine the person against whom the court enters an order under sub-  
29 section (2) of this section not more than \$5,000 for each violation. The fine shall be entered  
30 as a judgment and paid to the General Fund of the State Treasury. Each violation of the  
31 court order is a separate offense. For a continuing violation, each day's continuance is a  
32 separate violation, but the maximum penalty for a continuing violation may not exceed  
33 \$20,000 for each offense.

34 (4) If the court finds that a defendant has violated any provision of sections 2 to 4 of this  
35 2008 Act, a rule adopted under section 5 of this 2008 Act or an order of the director to en-  
36 force a provision of sections 2 to 4 of this 2008 Act, the court may appoint the director or  
37 another person as a receiver for the defendant or the defendant's assets. The court may not  
38 require the director to post a bond. The court may award reasonable attorney fees to the  
39 director if the director prevails in an action under this section. The court may award rea-  
40 sonable attorney fees to a defendant who prevails in an action under this section if the court  
41 determines that the director had no objectively reasonable basis for asserting the claim or  
42 no reasonable basis for appealing an adverse decision of the trial court.

43 (5) The director may include in any action authorized by this section:

44 (a) A claim for restitution or damages on behalf of a person injured by the act or practice  
45 constituting the subject matter of the action. The court has jurisdiction to award appropriate

1 relief to the person if the court finds that enforcement of the rights of the person by private  
2 civil action, whether by class action or otherwise, would be so burdensome or expensive as  
3 to be impractical.

4 (b) A claim for disgorgement of illegal gains or profits derived. Any recovery under this  
5 paragraph shall be turned over to the General Fund of the State Treasury unless the court  
6 requires other disposition.

7 **SECTION 8.** (1) Except as provided in ORS 183.745, the Director of the Department of  
8 Consumer and Business Services, upon entering an order to enforce a provision of sections  
9 2 to 4 of this 2008 Act, shall promptly give appropriate notice of the order as provided in this  
10 subsection. The notice shall state that a hearing will be held on the order if a written demand  
11 for hearing is filed with the director within 20 days after the date of service of the order.  
12 The director shall give notice regarding an order entered under section 7 of this 2008 Act to  
13 all interested persons.

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

17 (3) After the hearing, the director shall enter a final order vacating, modifying or af-  
18 firming the director's previous order.

19 **SECTION 9.** ORS 59.850 is amended to read:

20 59.850. (1) The Director of the Department of Consumer and Business Services by rule shall es-  
21 tablish procedures for licensing mortgage bankers or mortgage brokers. The director may coordinate  
22 licensing with any national registration or licensing system.

23 (2) An applicant for a license as a mortgage banker or mortgage broker, or a managing partner,  
24 director, executive officer or other individual occupying a similar position or performing similar  
25 functions for the applicant, shall have, during the five years immediately preceding the time of ap-  
26 plication, not less than three years' experience in the mortgage business, three years' experience  
27 negotiating loans in a related business satisfactory to the director or three years' equivalent lending  
28 experience in a related business satisfactory to the director.

29 (3) If a license as a mortgage banker or mortgage broker is issued to a person other than an  
30 individual, at least one managing partner, director, executive officer or other individual occupying  
31 a similar position or performing similar functions for the person shall, at all times during the term  
32 of the license, satisfy the experience requirement described in subsection (2) of this section.

33 (4) Every applicant for a license as a mortgage banker or mortgage broker shall file with the  
34 director a corporate surety bond or irrevocable letter of credit issued by an insured institution as  
35 defined in ORS 706.008 as the director may approve by rule running to the State of Oregon in a sum  
36 to be determined by the director by rule.

37 (5) The total amount of the corporate surety bond or irrevocable letter of credit for a single  
38 applicant under subsection (4) of this section shall be not less than \$25,000 but not more than  
39 \$50,000, regardless of the number of offices of the applicant. If an applicant has more than one office  
40 in this state to engage in residential mortgage transactions as a mortgage banker or mortgage bro-  
41 ker, the amount of the bond or letter of credit shall increase for each additional office in an amount  
42 determined by the director by rule. The amount of the increase in the bond or letter of credit for  
43 each additional office shall be not less than \$5,000 but not more than \$10,000. The director may  
44 adjust the minimum amount of the increase in the bond or letter of credit for additional offices as  
45 necessary to comply with the \$50,000 limit.

1 (6) If the application, surety bond or irrevocable letter of credit and fees are in order and the  
2 director is satisfied that the application should not be denied upon one or more of the grounds  
3 specified in ORS 59.865, 59.870 or 59.875, the director shall license the mortgage banker or mortgage  
4 broker.

5 (7) A licensee shall amend the license application and, if necessary, increase the amount of the  
6 corporate surety bond or irrevocable letter of credit as described in subsection (5) of this section  
7 when there are material changes in the information contained in the original application.

8 (8) The director shall:

9 (a) Charge and collect fees for initial and renewal license applications;

10 (b) Set by rule all fees required under this section. Fees shall be set to reflect those amounts  
11 sufficient to meet the costs of administering ORS 59.840 to 59.980 **and sections 2 to 4 of this 2008**  
12 **Act**, including those amounts sufficient to establish and maintain a reasonable emergency fund; and

13 (c) Set by rule the amounts of corporate surety bonds and irrevocable letters of credit required  
14 under this section.

15 (9) The fees under this section are not refundable except for those fees that the director deter-  
16 mines by rule may be refundable.

17 **SECTION 10.** ORS 59.880 is amended to read:

18 59.880. The Director of the Department of Consumer and Business Services shall have general  
19 supervision and control over all loan originators, mortgage bankers and mortgage brokers residing  
20 or doing business in this state and engaged in any activity subject to the provisions of ORS 59.840  
21 to 59.980 **and sections 2 to 4 of this 2008 Act**. All such persons and their records and everything  
22 connected with their activities shall be subject to examination by the director at any time. The  
23 provisions of this section and of any other section of ORS 59.840 to 59.980 **and sections 2 to 4 of**  
24 **this 2008 Act** relating to examinations shall extend to any person who should have been reported  
25 as a loan originator under ORS 59.969 or licensed as a mortgage banker or mortgage broker, any  
26 person exempted by rule from those definitions or any person whose license has expired or has been  
27 withdrawn, canceled, suspended, conditioned or revoked. The director may collect from each such  
28 person the actual expenses incurred in that examination.

29 **SECTION 11.** ORS 706.544 is amended to read:

30 706.544. A banking institution or a non-Oregon institution shall pay to the Director of the De-  
31 partment of Consumer and Business Services the actual costs of the Department of Consumer and  
32 Business Services, as determined by the director, for conducting any special examination or taking  
33 any action under ORS 706.600 **or under sections 2 to 4 of this 2008 Act**.

34  
35 **APPLICABILITY AND OPERATIVE DATE**

36  
37 **SECTION 12.** (1) **Section 4 of this 2008 Act and the amendments to ORS 59.850 by section**  
38 **9 of this 2008 Act apply to subprime mortgages and nontraditional mortgages originated on**  
39 **or after the operative date set forth in section 13 of this 2008 Act.**

40 (2) **Sections 2, 3 and 5 to 8 of this 2008 Act and the amendments to ORS 59.880 and 706.544**  
41 **by sections 10 and 11 of this 2008 Act apply to subprime mortgages and nontraditional**  
42 **mortgages originated on or after the effective date of this 2008 Act.**

43 **SECTION 13.** (1) **Section 4 of this 2008 Act and the amendments to ORS 59.850 by section**  
44 **9 of this 2008 Act become operative 120 days following the effective date of this 2008 Act.**

45 (2) **The Director of the Department of Consumer and Business Services may take any**

1 action before the operative date set forth in subsection (1) of this section that is necessary  
2 to enable the director to exercise, on and after the operative date, all the duties, functions  
3 and powers conferred on the director by section 4 of this 2008 Act and the amendments to  
4 ORS 59.850 by section 9 of this 2008 Act.

5  
6 **CAPTIONS**

7  
8 **SECTION 14.** The unit captions used in this 2008 Act are provided only for the conven-  
9 ience of the reader and do not become part of the statutory law of this state or express any  
10 legislative intent in the enactment of this 2008 Act.

11  
12 **EMERGENCY CLAUSE**

13  
14 **SECTION 15.** This 2008 Act being necessary for the immediate preservation of the public  
15 peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect  
16 on its passage.

17 \_\_\_\_\_