

Minority Report
A-Engrossed
Senate Bill 275

Ordered by the Senate April 29
Including Senate Minority Report Amendments dated April 29

Sponsored by nonconcurring members of the Senate Committee on Business and Transportation: Senators GIROD, THOMSEN

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 loan servicers to obtain license or endorsement and requires other persons that engage in business as mortgage loan servicers to obtain endorsement. Specifies considerations Director of Department of Consumer and Business Services may use in deciding whether to issue license or endorsement. Requires applicant for license or endorsement to file corporate surety bond or irrevocable letter of credit with, and to provide proof of financial responsibility to, director and to notify director of certain changes to mortgage loan servicer's operations or governance.

Subjects mortgage loan servicer's books and records to director's examination or examination that Conference of State Bank Supervisors conducts. Permits director to [*take temporary possession and control of, or to direct sale of, mortgage loan servicer's assets*] **petition court to appoint receiver to manage mortgage loan servicer's affairs** in certain circumstances. Requires mortgage loan servicer to maintain escrow account for funds from borrowers in this state and directs mortgage loan servicer to segregate funds in escrow account from all of mortgage loan servicer's other funds.

Prohibits certain practices and otherwise subjects mortgage loan servicers to regulations of similar nature and extent as regulations to which mortgage bankers and mortgage brokers are subject.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to regulating mortgage loan servicers; creating new provisions; amending ORS 86A.095,
3 86A.100, 86A.103, 86A.106, 86A.109, 86A.112, 86A.115, 86A.118, 86A.121, 86A.124, 86A.136,
4 86A.151, 86A.154, 86A.163, 86A.166, 86A.169, 86A.183 and 646.633; repealing ORS 86A.175; and
5 declaring an emergency.

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

7 **SECTION 1.** ORS 86A.095 is amended to read:

8 86A.095. ORS 86A.095 to 86A.198 may be cited as the [*"Oregon Mortgage Lender Law."*] **"Oregon**

9 **Mortgage Lender and Loan Servicer Practices Act."**

10 **SECTION 2.** ORS 86A.100 is amended to read:

11 86A.100. As used in ORS 86A.095 to 86A.198:

12 [(1) *"Fraud," "deceit" and "defraud" are not limited to common-law deceit.*]

13 (1) **"Endorsee" means a person that obtains an endorsement under ORS 86A.106 to en-**
14 **gage in business as a mortgage loan servicer in this state.**

15 (2) **"Endorsement" means an authorization to engage in business as a mortgage loan**
16 **servicer in this state that the Director of the Department of Consumer and Business Ser-**

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 vices grants under ORS 86A.106 as a supplement to the authorization a mortgage banker, a
 2 mortgage broker or a person that is licensed under ORS 725.140 has under the mortgage
 3 banker's, mortgage broker's or person's existing license.

4 (3) "Engage in business as a mortgage banker in this state" means to perform an act that
 5 a mortgage banker may perform under a license that the director issues under ORS 86A.106,
 6 if the act involves residential real property that is located in this state or a borrower who
 7 resides in this state.

8 (4) "Engage in business as a mortgage broker in this state" means to perform an act that
 9 a mortgage broker may perform under a license that the director issues under ORS 86A.106,
 10 if the act involves residential real property that is located in this state or a borrower who
 11 resides in this state.

12 (5) "Engage in business as a mortgage loan servicer in this state" means to perform an
 13 act that a mortgage loan servicer may perform under a license or endorsement that the di-
 14 rector issues under ORS 86A.106, if the act involves residential real property that is located
 15 in this state or a borrower who resides in this state.

16 (6) "Engage in residential mortgage transactions in this state" means to perform an act
 17 that a mortgage banker or mortgage broker may perform under a license that the director
 18 issues under ORS 86A.106, if the act:

19 (a) Is a residential mortgage transaction that originates in this state or is directed to
 20 and received in this state; or

21 (b) Involves real property that is located in this state.

22 [(2)] (7) "License" means a license that the director issues [issued] under ORS 86A.106 to a
 23 person to authorize the person to engage in business as a mortgage banker, [or] a mortgage
 24 broker or a mortgage loan servicer in this state [under ORS 86A.095 to 86A.198].

25 (8) "Licensee" means a person that obtains a license under ORS 86A.106 to engage in
 26 business as a mortgage banker, mortgage broker or mortgage loan servicer in this state.

27 [(3)(a)] (9)(a) "Mortgage banker" means a person that for compensation or in the expectation
 28 of compensation:

29 (A) [Either] Directly or indirectly makes[,] or negotiates, or offers to make or negotiate, a
 30 mortgage banking loan or a mortgage loan; and

31 (B) Services or sells a mortgage banking loan.

32 (b) "Mortgage banker" does not include:

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

34 (B) A financial holding company or a bank holding company, as defined in ORS 706.008, if the
 35 financial holding company or bank holding company does not do more than control a subsidiary or
 36 affiliate, as [described] defined in 12 U.S.C. 1841, as in effect on the operative date specified in
 37 section 31 of this 2015 Act, and does not engage in [the] business [of] as a mortgage banker, [or]
 38 a mortgage broker or a mortgage loan servicer in this state.

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

43 (D) An attorney licensed or otherwise authorized to practice law in this state, if the attorney:

44 (i) Negotiates the terms of a residential mortgage loan as an ancillary matter in the attorney's
 45 representation of a client; and

1 (ii) Does not receive compensation from a mortgage banker, mortgage broker, **mortgage loan**
 2 **servicer**, mortgage loan originator or lender or an agent of the mortgage banker, mortgage broker,
 3 **mortgage loan servicer**, mortgage loan originator or lender.

4 (E) A person that, as a seller of real property, receives one or more mortgages or deeds of trust
 5 as security for a separate money obligation.

6 (F) An agency of a state or of the United States.

7 (G) A person that receives a mortgage or deed of trust on real property as security for an ob-
 8 ligation [*payable*] **that the mortgagor or grantor may pay** on an installment or deferred payment
 9 basis and [*arising out of*] **that arises from furnishing** materials [*furnished*] or **rendering** services
 10 [*rendered in improving*] **to improve** the real property or a **person that has a lien on real property**
 11 **that is** created without the consent of the owner of the real property.

12 (H) A person that funds a mortgage banking loan or mortgage loan that a licensee or exempt
 13 person originated and processed [*and that*] **if the person** does not maintain a place of business in
 14 this state in connection with funding mortgage banking loans or mortgage loans, does not directly
 15 or indirectly solicit borrowers in this state for the purpose of making mortgage banking loans or
 16 mortgage loans and does not participate in negotiating mortgage banking loans or mortgage loans.
 17 For the purpose of this subparagraph, “negotiating mortgage banking loans or mortgage loans” does
 18 not include setting the terms under which a person may buy or fund a mortgage banking loan or a
 19 mortgage loan that a licensee or exempt person originated.

20 (I) A nonprofit [*federally tax exempt*] corporation **that is exempt from federal taxation, that**
 21 **is** certified by the United States Small Business Administration, **that is** [*and*] organized to promote
 22 economic development within this state [*whose*] **and that, as a primary activity, [consists of pro-**
 23 **viding] provides** financing for business expansion.

24 (J) A **mortgage broker or a person that is** [*licensee*] licensed under ORS [*chapter 725 or a*
 25 *mortgage broker*] **725.140.**

26 (K) A retirement or pension fund.

27 (L) An insurer, as defined in ORS 731.106.

28 (M) A court appointed fiduciary.

29 (N) A person [*designated by rule or order of*] **that** the director [*of the Department of Consumer*
 30 *and Business Services*] **designates by rule or order.**

31 [(4)] (10) “Mortgage banking loan” means a loan, extension of credit or a retail sales contract
 32 that [*is funded*] **a mortgage banker funds** exclusively from the mortgage banker’s own resources,
 33 **and** that is directly or indirectly secured by a mortgage or deed of trust or any lien interest on real
 34 [*estate and that is created with the consent of*] **property to which** the owner of the real property
 35 **consents.** For purposes of this subsection, “own resources” means any of the following:

36 (a) Cash, corporate capital, warehouse credit lines at a financial [*institutions*] **institution, as**
 37 defined in ORS 706.008, or other sources that are liability items [*of*] **in** the mortgage banker’s fi-
 38 nancial statements for which the mortgage banker’s assets are pledged;

39 (b) Correspondent contracts between the mortgage banker and a bank, savings bank, trust
 40 company, savings and loan association, credit union, profit sharing or pension trust, **insurance**
 41 **company or a person** [*licensee under*] **that is licensed under** ORS [*chapter 725 or an insurance*
 42 *company*] **725.140;** or

43 (c) [*The mortgage banker’s affiliates’*] Cash, corporate capital, warehouse credit lines at a fi-
 44 nancial [*institutions*] **institution, as** defined in ORS 706.008, or other sources **from a mortgage**
 45 **banker’s affiliate** that are liability items on the [*affiliates’*] **affiliate’s** financial statements for

1 which the [*affiliates*] **affiliate's** assets are pledged. As used in this paragraph, [*“affiliates”*]
 2 **“affiliate”** means [*entities*] **an entity** that, directly or indirectly, through one or more intermediaries
 3 [*control*] **controls**, [*are*] **is** controlled by or [*are*] **is** under common control with the [*entity specified*]
 4 **mortgage banker or another entity.**

5 [(5)(a)] **(11)(a)** “Mortgage broker” means a person that:

6 (A) Engages all or part of the time, for the account of others or for the person's own account,
 7 in the business of selling real estate paper, whether as **an** issuer, **an** agent or **a** principal to persons
 8 other than persons enumerated in ORS 59.035 (4);

9 (B) Engages all or part of the time, for the account of others or for the person's own account,
 10 in the business of accepting funds **for investment in real estate paper** from one or more persons
 11 other than persons enumerated in ORS 59.035 (4) [*for investment in real estate paper*]; or

12 (C) [*For compensation, or in the expectation of compensation, either*] Directly or indirectly
 13 makes[,] **or** negotiates or offers to make or negotiate a mortgage loan **for compensation or in the**
 14 **expectation of compensation.**

15 (b) “Mortgage broker” does not include:

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

17 (B) A financial holding company or a bank holding company, as defined in ORS 706.008, if the
 18 financial holding company or bank holding company does not do more than control a subsidiary or
 19 affiliate, as described in 12 U.S.C. 1841 **as in effect on the operative date specified in section**
 20 **31 of this 2015 Act**, and does not engage in [*the*] business [*of*] **as** a mortgage banker, [*or*] **a mortgage**
 21 **broker or a mortgage loan servicer in this state.**

22 (C) A person that purchases real property and issues an obligation to finance the transaction
 23 to the seller incidentally to the sale.

24 (D) A real estate licensee, as defined in ORS 696.010, who performs services [*solely*] **that are**
 25 **only** incidental to the practice of professional real estate activity, as defined in ORS 696.010, unless
 26 the real estate licensee performs the functions of a mortgage banker or a mortgage broker as de-
 27 fined in this section.

28 (E) A **mortgage banker or a** person licensed under [*the provisions of ORS chapter 725 or a*]
 29 *mortgage banker*] **ORS 725.140.**

30 (F) A person that, **although not engaged in the business of making loans secured by an**
 31 **interest in real property**, makes a loan secured by an interest in real estate with the person's own
 32 moneys, for the person's own investment [*and that is not engaged in the business of making loans*]
 33 *secured by an interest in real estate*].

34 (G) An attorney licensed or otherwise authorized to practice law in this state, if the attorney:

35 (i) Negotiates the terms of a residential mortgage loan as an ancillary matter in the attorney's
 36 representation of a client; and

37 (ii) Does not receive compensation from a mortgage banker, mortgage broker, **mortgage loan**
 38 **servicer**, mortgage loan originator or lender or an agent of the mortgage banker, mortgage broker,
 39 **mortgage loan servicer**, mortgage loan originator or lender.

40 (H) A person that, as a seller of real property, receives one or more mortgages or deeds of trust
 41 as security for a separate money obligation.

42 (I) An agency of a state or of the United States.

43 (J) A person that receives a mortgage or deed of trust on real property as security for an obli-
 44 gation payable on an installment or deferred payment basis and arising out of materials furnished
 45 or services rendered in improving the real property or a lien created without the consent of the

1 owner of the real property.

2 (K) A person that funds a mortgage loan that a licensee or exempt person originated and pro-
 3 cessed, *[and that]* **if the person** does not maintain a place of business in this state in connection
 4 with funding mortgage loans, does not directly or indirectly solicit borrowers in this state for the
 5 purpose of making mortgage loans and does not participate in negotiating mortgage loans. For the
 6 purpose of this subparagraph, “negotiating mortgage loans” does not include setting the terms under
 7 which a person may buy or fund a mortgage loan that a licensee or exempt person originated.

8 (L) A nonprofit *[federally tax exempt]* corporation **that is exempt from federal taxation, that**
 9 **is certified by the United States Small Business Administration, that is** *[and]* organized to promote
 10 economic development within this state *[whose]* **and that, as a primary activity** *[consists of provid-*
 11 *ing]*, **provides** financing for business expansion.

12 (M) A person licensed under ORS 446.691 or 446.696 or a temporary manufactured structure
 13 dealer licensee under ORS 446.701 that provides services customarily associated with the retail sales
 14 of manufactured dwellings, including *[communication of]* **communicating** generally available infor-
 15 mation *[regarding]* **about** mortgage loans, unless:

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

18 (ii) *[For the benefit of a potential purchaser,]* The person completes a loan application form or
 19 other document that is part of a mortgage banking loan and *[completes]* a good faith estimate under
 20 the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq. and Regulation H, 12
 21 C.F.R. part 1008, as in effect on *[January 1, 2014]* **the operative date specified in section 31 of**
 22 **this 2015 Act, for the benefit of a prospective purchaser;**

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

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

27 (N) A person *[designated by rule or order of]* the director **designates by rule or order.**

28 *[(6)] (12)* “Mortgage loan” means a loan, extension of credit or retail sales contract, other than
 29 a mortgage banking loan, **that is** secured by a mortgage or deed of trust or a lien interest on real
 30 *[estate that is created with the consent of]* **property to which** the owner of the real *[estate]* **property**
 31 **consents.**

32 *[(7)] (13)* “Mortgage loan originator” has the meaning given that term in ORS 86A.200.

33 **(14)(a) “Mortgage loan servicer” means a person that:**

34 **(A) Has the right or obligation under the terms of a mortgage loan or mortgage banking**
 35 **loan to accept or collect, or engages all or part of the time in accepting or collecting, pay-**
 36 **ments of principal, interest and trust items that include, but are not limited to, hazard in-**
 37 **surance and taxes, in order to remit the payments to:**

38 **(i) A lender;**

39 **(ii) A note owner;**

40 **(iii) A note holder or another person that holds an interest in a note; or**

41 **(iv) A mortgage banker’s or mortgage broker’s account.**

42 **(B) Performs services that include loan payment follow-up, delinquency loan follow-up,**
 43 **loan analysis and notifications to the borrower that enable the borrower to keep a mortgage**
 44 **loan or mortgage banking loan current and in good standing.**

45 **(C) Brings or maintains a suit or action to collect amounts that a borrower owes on a**

1 mortgage loan or mortgage banking loan or to seek remedies that include, but are not lim-
 2 ited to injunction, specific performance, judicial or nonjudicial foreclosure, receivership or
 3 other contractual, statutory or common-law remedies.

4 (D) With respect to residential mortgage loans, is a servicer, as defined in 12 U.S.C.
 5 2605(i)(2), as in effect on the operative date specified in section 31 of this 2015 Act.

6 (b) "Mortgage loan servicer" does not include:

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

8 (B) A financial holding company or a bank holding company, as defined in ORS 706.008,
 9 if the financial holding company or bank holding company does not do more than control a
 10 subsidiary or affiliate, as defined in 12 U.S.C. 1841, as in effect on the operative date specified
 11 in section 31 of this 2015 Act, and does not engage in business as a mortgage loan servicer
 12 in this state.

13 (C) A licensee, as defined in ORS 725.010, or a person that has a license the director is-
 14 sued under ORS 86A.095 to 86A.198.

15 (D) An attorney licensed or otherwise authorized to practice law in this state, if the at-
 16 torney acts as a mortgage loan servicer for a client in the attorney's representation of a
 17 client.

18 (E) An entity that the director determines by rule is a nonprofit corporation that is ex-
 19 empt from federal taxation.

20 (F) An escrow agent licensed under ORS 696.511, with respect to the escrow agent's:

21 (i) Collection or billing activities that are involved in closing an escrow, as defined in ORS
 22 696.505, or related to a collection escrow, as defined in ORS 696.505; or

23 (ii) Service as a trustee of a trust deed in accordance with ORS 86.713.

24 (G) An individual that offers or negotiates terms for a residential mortgage loan under
 25 an exemption set forth in ORS 86A.203.

26 (H) An agency of a state or of the United States.

27 [(8)] (15) "Residential mortgage transaction" means a transaction in which a mortgage, deed of
 28 trust, purchase money security interest [*arising*] **that arises** under an installment sales contract,
 29 or **an** equivalent consensual security interest is created or retained in **real** property upon which
 30 four or fewer residential dwelling units are planned or situated, including but not limited to indi-
 31 vidual units or condominiums and cooperatives. As used in this subsection, "residential dwelling
 32 unit" means an improvement designed for residential occupancy.

33 **SECTION 3.** ORS 86A.103 is amended to read:

34 86A.103. (1) [*It is unlawful for any*] **A** person [*to*] **may not** engage in residential mortgage
 35 transactions in this state as a mortgage banker, [*or*] mortgage broker **or mortgage loan servicer**
 36 unless the person [*is licensed*] **obtains a license** under ORS 86A.095 to 86A.198. A person [*who*] **that**
 37 is a mortgage banker, [*or*] mortgage broker **or mortgage loan servicer** [*under ORS 86A.100*], but
 38 [*who*] **that** does not engage in residential mortgage transactions in this state, [*is not required to*]
 39 **need not** obtain a license under ORS 86A.095 to 86A.198.

40 (2) **A person may not engage in business as a mortgage loan servicer in this state unless**
 41 **the person obtains a license or an endorsement under ORS 86A.095 to 86A.198.** A person that
 42 is a mortgage loan servicer but that does not engage in business as a mortgage loan servicer
 43 in this state need not obtain a license or an endorsement under ORS 86A.095 to 86A.198.

44 (3) **A licensed mortgage banker or mortgage broker may service or collect a mortgage**
 45 **banking loan or mortgage loan in the mortgage banker's or mortgage broker's own name or**

1 **on behalf of the lender, note owner, note holder or other person that holds an interest in the**
 2 **note if the mortgage banker or mortgage broker obtains an endorsement under ORS 86A.106**
 3 **and if the mortgage banker or mortgage broker has the permission of the lender, note owner,**
 4 **note holder or other person that holds an interest in the note.**

5 *[(2) For purposes of this section, a person “engages in residential mortgage transactions in this*
 6 *state” when any act constituting the business of a mortgage banker or mortgage broker and involving*
 7 *a residential mortgage transaction originates from this state or is directed to and received in this state*
 8 *or when the real estate that is the subject of the activities of the mortgage banker or mortgage broker*
 9 *is located in this state.]*

10 **SECTION 4.** ORS 86A.106 is amended to read:

11 86A.106. (1) The Director of the Department of Consumer and Business Services by rule shall
 12 establish procedures for licensing **or issuing an endorsement to** mortgage bankers, [or] mortgage
 13 brokers **and mortgage loan servicers**. The director may coordinate licensing with the Nationwide
 14 Mortgage Licensing System and Registry.

15 **(2) To accept an application and issue a license or endorsement under the procedures**
 16 **described in subsection (1) of this section, the director may:**

17 *[(2)] (a) Require* an applicant [*for a license*], or a managing partner, director, executive officer
 18 or other individual that occupies a similar position or performs similar functions for the applicant,
 19 [*shall*] **to** have, during the five years immediately preceding the time of application, not less than
 20 three years’ experience in the mortgage business, three years’ experience negotiating loans in a re-
 21 lated business **that the director finds** satisfactory [*to the director*] **for the purpose of demon-**
 22 **strating adequate experience** or three years’ equivalent lending experience in a related business
 23 **that the director finds** satisfactory [*to the director*] **for the purpose of demonstrating adequate**
 24 **experience.**

25 *[(3)] (b) [If a license is issued to a person other than an individual,] Require* at least one man-
 26 aging partner, director[, or] executive officer, or other individual that occupies a similar position
 27 or performs similar functions for [*the person shall, at all times during the term of the license,] an*
 28 **applicant that is not an individual, to** satisfy the experience requirement described in [*subsection*
 29 *(2) of this section*] **paragraph (a) of this subsection at all times during the term of the**
 30 **license.**

31 *[(4)] (c)(A) Except as provided in subparagraph (C) of this paragraph, require* an applicant
 32 [*for a license*] that is not subject to the requirement set forth in ORS 86A.227 [*shall*] **to** file with the
 33 director a corporate surety bond or irrevocable letter of credit that is approved by the director, in
 34 an amount the director specifies by rule, that runs to the State of Oregon and that is issued by an
 35 insured institution as defined in ORS 706.008.

36 *[(5)] (B) Require* the total amount of the corporate surety bond or irrevocable letter of credit
 37 for a single applicant under [*subsection (4) of this section shall be not*] **subparagraph (A) of this**
 38 **paragraph to be not** less than \$50,000. The director by rule shall require the sum of the corporate
 39 surety bond or irrevocable letter of credit to reflect the dollar amount of the loans that the mort-
 40 gage banker or mortgage broker originates.

41 **(C) Exempt an applicant for a license to engage in business as a mortgage loan servicer**
 42 **in this state from the requirement set forth in subparagraph (A) of this paragraph.**

43 **(d) Require an applicant for a license or an endorsement to engage in business as a**
 44 **mortgage loan servicer in this state to provide in a form and format the director specifies:**

45 **(A) The applicant’s name and address;**

1 (B) The applicant's organizational structure and ownership;

2 (C) The name and address of the applicant's primary contact person;

3 (D) A list of licenses or endorsements that other states have issued to the applicant that
4 permit the applicant to engage in activities that are similar or equivalent to engaging in
5 business as a mortgage loan servicer in this state;

6 (E) A statement that, for the applicant or a managing partner, director, executive officer
7 or other individual that occupies a similar position or performs similar functions for the
8 applicant, discloses whether:

9 (i) Another state denied or refused the applicant or the individual a license to engage in
10 activities similar or equivalent to engaging in business as a mortgage loan servicer in this
11 state;

12 (ii) A final administrative order required the applicant or the individual to cease specified
13 conduct, pay a civil penalty or take any other action adverse to the applicant's or individual's
14 interests;

15 (iii) A state or a federal regulator found that the applicant or the individual engaged in
16 unsafe or unsound banking or mortgage loan servicing activities;

17 (iv) The applicant or the individual at any time pleaded guilty or no contest to or was
18 convicted in a state, federal, foreign or military court of a misdemeanor that involved false
19 statements or dishonesty; or

20 (v) The applicant or the individual pleaded guilty or no contest or was convicted in a
21 state, federal, foreign or military court of a felony that involved fraud, dishonesty, a breach
22 of trust or laundering a monetary instrument;

23 (F) Proof of financial responsibility in accordance with section 6 of this 2015 Act;

24 (G) An audited financial statement that a certified public accountant prepared and that
25 covers the two years before the date of the application, if the applicant has existed for at
26 least two years, as proof that the applicant meets the prudential requirements in section 6
27 of this 2015 Act; and

28 (H) Any other information the director reasonably considers necessary to determine an
29 applicant's financial responsibility, experience, character and general fitness to engage in
30 business as a mortgage loan servicer in this state.

31 [(6)] (3) If the application, surety bond or irrevocable letter of credit and fees are in order and
32 the director is satisfied that the **director should not deny the** application [*should not be denied*
33 *upon*] **on** one or more of the grounds specified in ORS 86A.115, 86A.118 or 86A.121, the director shall
34 **issue the** license [*the mortgage banker or mortgage broker*] **or endorsement for which the appli-**
35 **cant applied.**

36 [(7)] (4) **The director shall require** a licensee **or endorsee** [*shall*] **to** amend the license **or**
37 **endorsement** application and, if necessary, increase the amount of the corporate surety bond or
38 irrevocable letter of credit described in subsection [(5)] (2)(c) of this section [*when there are*] **if**
39 material changes in the information [*contained*] in the original application **have occurred.**

40 [(8)] (5) An applicant for a license **or endorsement** under this section or a licensee **or endorsee**
41 who applies to renew a license **or endorsement** under ORS 86A.109 shall certify to the director in
42 a form and manner the director specifies by rule that the applicant or licensee **or endorsee** has
43 independently verified that every individual the applicant or licensee **or endorsee** hired or intends
44 to hire as a mortgage loan originator:

45 (a) Meets the requirements set forth in ORS 86A.200 to 86A.239;

1 (b) Has undergone a state criminal records check in accordance with ORS 86A.186; and

2 (c) Is covered, if applicable, by a corporate surety bond as provided in ORS 86A.227.

3 [(9)] (6) The director shall:

4 (a) Charge and collect fees for initial and renewal license **or endorsement** applications.

5 (b) Set by rule all fees required under this section. The director shall set the fees to reflect
6 amounts **that, in the aggregate, are** sufficient to meet the costs of administering ORS 86A.095 to
7 86A.198, including amounts sufficient to establish and maintain a reasonable emergency fund.

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

10 [(10)] (7) The fees under this section are not refundable except for fees that the director deter-
11 mines by rule are refundable.

12 **SECTION 5. Sections 6 and 7 of this 2015 Act are added to and made a part of ORS**
13 **86A.095 to 86A.198.**

14 **SECTION 6. (1) A person that is subject to the requirement under ORS 86A.103 to obtain**
15 **a license or endorsement to engage in business as a mortgage loan servicer shall submit**
16 **proof of financial responsibility with the person's application for the license and at intervals**
17 **that the Director of the Department of Consumer and Business Services specifies by rule.**

18 (2) Proof of financial responsibility under subsection (1) of this section must include:

19 (a) A demonstration that an applicant, licensee or endorsee retains an adequate liquid
20 reserve in accordance with requirements the director adopts by rule. The rules the director
21 adopts must allow the director to specify an adequate liquid reserve for an applicant, licensee
22 or endorsee based on:

23 (A) The amount of the unpaid principal balance that the applicant, the licensee or the
24 endorsee services;

25 (B) The quality and performance of the loans the applicant, the licensee or the endorsee
26 services; and

27 (C) Whether the applicant, licensee or endorsee services:

28 (i) The applicant's, licensee's or endorsee's own obligations; or

29 (ii) Only a third party's residential mortgage loans.

30 (b)(A) A surety bond issued by a financial institution. The surety bond must be condi-
31 tioned on the applicant's, the licensee's or the endorsee's:

32 (i) Faithfully performing any and all written agreements or commitments with or for the
33 benefit of mortgagors and mortgagees;

34 (ii) Providing a true and faithful accounting for all funds the applicant, the licensee or
35 the endorsee receives from a mortgagor or mortgagee in the applicant's, the licensee's or
36 the endorsee's capacity as a mortgage loan servicer; and

37 (iii) Engaging in business as a mortgage loan servicer in this state in a manner that is
38 consistent with the provisions of ORS 86A.095 to 86A.198.

39 (B) The director shall specify the amount of the corporate surety bond the applicant, the
40 licensee or the endorsee must submit under this paragraph based on the volume of business
41 in which the applicant, the licensee or the endorsee engages as a mortgage loan servicer.

42 (c) An errors and omissions insurance policy against losses from fraud, embezzlement,
43 forgery or similar occurrences. The director shall specify the per occurrence limit and total
44 limit for the errors and omissions policy based on the volume of business in which the ap-
45 plicant, the licensee or the endorsee engages as a loan servicer.

1 **(2) A mortgage loan servicer each year shall submit to the director independently audited**
2 **financial statements, financial projections and other documents that are necessary for the**
3 **director to determine whether a mortgage loan servicer has engaged in business as a mort-**
4 **gage loan servicer in this state in a prudent manner. The mortgage loan servicer shall sub-**
5 **mit the statements, projections and other documents this subsection requires at a time and**
6 **in a form and format the director specifies by rule.**

7 **SECTION 7. A mortgage loan servicer shall notify the Director of the Department of**
8 **Consumer and Business Services, in a manner and using a form or format the director**
9 **specifies by rule and not later than 30 days after the mortgage loan servicer knows or has**
10 **reason to know, that:**

11 **(1) The mortgage loan servicer has filed or intends to file for bankruptcy;**

12 **(2) The mortgage loan servicer has or plans to restructure the mortgage loan servicer's**
13 **business;**

14 **(3) The mortgage loan servicer or any of the mortgage loan servicer's officers, directors,**
15 **members, partners or shareholders that own 10 percent or more of the mortgage loan**
16 **servicer's outstanding stock are subject to a felony indictment or were convicted of a felony;**

17 **(4) An agency of any state or an agency of the United States has or soon will:**

18 **(a) Deny a license or an equivalent authorization to the mortgage loan servicer;**

19 **(b) Order the mortgage loan servicer to cease and desist from specified conduct;**

20 **(c) Begin suspension or revocation procedures; or**

21 **(d) Take other formal or informal regulatory action against the mortgage loan servicer;**

22 **(5) The Attorney General or the attorney general of another state has commenced or**
23 **intends to commence a civil action against the mortgage loan servicer;**

24 **(6) The Attorney General or an attorney general of another state has petitioned a court**
25 **of competent jurisdiction to enforce an existing judgment;**

26 **(7) A government-sponsored enterprise has suspended or terminated the mortgage loan**
27 **servicer's status as an approved seller or servicer;**

28 **(8) Certain servicing rights of the mortgage loan servicer will be rescinded or canceled,**
29 **the loss of which significantly affects the mortgage loan servicer's ability to service the**
30 **mortgage loan servicer's portfolio;**

31 **(9) Any of the mortgage loan servicer's officers, directors, members, partners or share-**
32 **holders that own 10 percent or more of the mortgage loan servicer's outstanding stock have**
33 **filed for bankruptcy; or**

34 **(10) A consumer filed a class action lawsuit against the mortgage loan servicer that is**
35 **related to the operation of the mortgage loan servicer's business.**

36 **SECTION 8. ORS 86A.109 is amended to read:**

37 86A.109. (1) *[An initial]* **A license or endorsement that the Director of the Department of**
38 **Consumer and Business Services issues under ORS 86A.106 expires one year after the date the**
39 **director issued the license or endorsement,** *[of issuance]* **unless the director** *[of the Department*
40 *of Consumer and Business Services]* **establishes a different expiration date to coordinate with the**
41 **Nationwide Mortgage Licensing System and Registry.**

42 (2) The director by rule shall establish procedures to renew a license **or endorsement**. The rule
43 shall specify the duration of a renewed license **or endorsement**.

44 (3) *[If there is a change in the]* **If a licensee or endorsee changes** partners, directors, officers
45 **or persons that occupy similar positions or perform similar functions for the licensee or**

1 **endorsee**, or **if the** persons that directly or indirectly control a [*mortgage banker or mortgage*
2 *broker*] **licensee or endorsee change, the licensee shall file** written notification of the change
3 [*must be filed*] promptly with the director. [*No fee is required for*] **A licensee need not pay a fee**
4 **for** the notification.

5 **SECTION 9.** ORS 86A.112 is amended to read:

6 86A.112. (1) A [*mortgage banker or mortgage broker*] **licensee** shall make and keep accounts,
7 correspondence, memoranda, papers, books and other records that the Director of the Department
8 of Consumer and Business Services **prescribes** by rule or order [*prescribes. The mortgage banker or*
9 *mortgage broker*]. **The licensee** shall preserve the records for five years unless the director by rule
10 prescribes otherwise. The director may examine the records within or outside this state at any
11 reasonable time [*or times*] and may require **the license to produce the records** without subpoena
12 [*the production of the records*] at the **director's** office [*of the director*] as often as is reasonably
13 necessary.

14 (2) A [*mortgage banker or mortgage broker*] **licensee** shall file financial reports or other infor-
15 mation that the director by rule or order requires and shall promptly correct a document **the**
16 **licensee** filed with the director that is or becomes incomplete or inaccurate in any material respect.

17 (3) On or before May 1 of each year or on a date the director establishes by rule, a [*mortgage*
18 *banker or mortgage broker*] **licensee** shall file a report with the director in a form [*prescribed by*]
19 the director **prescribes**. [*The report shall contain information the director requires concerning the*
20 *mortgage banker's or mortgage broker's business and operations related to residential mortgage lend-*
21 *ing during the preceding calendar year. The information shall include the number and nature of loans*
22 *originated by mortgage loan originators that the mortgage banker or mortgage broker employed.*] **For**
23 **purposes of this subsection, a report of condition that the licensee files in accordance with**
24 **the Nationwide Mortgage Licensing System and Registry fulfills the reporting requirement.**

25 (4) The report and any records **the licensee submits** [*submitted*] to the director under this
26 section are exempt from disclosure or production and are confidential as provided under ORS
27 705.137.

28 (5) Notwithstanding the exemption and confidentiality provisions of subsection (4) of this section,
29 the director may abstract information [*contained in*] **from** reports submitted under subsection (3) of
30 this section and may make the abstracted information available for public inspection [*provided*
31 *that*] **if** the abstracted information does not identify a particular [*mortgage banker or mortgage*
32 *broker*] **licensee** as a source of the information.

33 **SECTION 10.** ORS 86A.115 is amended to read:

34 86A.115. Except as provided in ORS 86A.118, the Director of the Department of Consumer and
35 Business Services may by order deny, suspend, condition or revoke a license **or endorsement** if the
36 director finds that [*the*] **an** applicant, [*or*] licensee **or endorsee**:

37 (1) Is insolvent[, *either in the sense that the liabilities of the applicant or licensee exceed the assets*
38 *of the applicant or licensee or that the applicant or licensee cannot meet the obligations of the applicant*
39 *or licensee as the obligations mature, or that the applicant or licensee is in such financial condition that*
40 *the applicant or licensee cannot continue in business with safety to the customers of the applicant or*
41 *licensee*].

42 (2) Engaged in dishonest, fraudulent or illegal practices or conduct in any business or profession
43 or unfair or unethical practices or conduct in connection with the mortgage business.

44 (3) Willfully or repeatedly violated or failed to comply with a provision of ORS 86A.095 to
45 86A.198 or a rule or order of the director.

1 (4) Failed, in *[conducting]* **engaging in** business as a mortgage banker, *[or]* **a mortgage broker**
 2 **or a mortgage loan servicer in this state**, to comply with the provisions of:

3 (a) The Truth in Lending Act, 15 U.S.C. 1601 et seq. and Regulation Z, 12 C.F.R. part *[226]*
 4 **1026**, as in effect on *[October 1, 2009]* **the operative date specified in section 31 of this 2015**
 5 **Act**;

6 (b) The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq. and Regulation X, *[24*
 7 *C.F.R. part 3500]* **12 C.F.R. Part 1024**, as in effect on *[January 1, 2010]* **the operative date speci-**
 8 **fied in section 31 of this 2015 Act**;

9 (c) The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq. and Regulation B, 12 C.F.R. *[202.9,*
 10 *202.11, 202.12 and 202.14]* **Part 1002**, as in effect on *[July 30, 2009]* **the operative date specified in**
 11 **section 31 of this 2015 Act**; or

12 (d) 12 U.S.C. 5101 et seq. and regulations adopted under 12 U.S.C. 5101 et seq., **as in effect on**
 13 **the operative date specified in section 31 of this 2015 Act.**

14 (5) Was convicted **in any jurisdiction** of a misdemeanor, an essential element of which is fraud,
 15 or of a felony.

16 (6) Filed an application for a license **or endorsement** that, as of the date the license **or**
 17 **endorsement** was issued, or as of the date of an order that denied, suspended, conditioned or re-
 18 voked *[a]* **the license or endorsement**, was incomplete in any material respect or contained a
 19 statement that was, in light of the circumstances under which the statement was made, false or
 20 misleading with respect to a material fact.

21 (7) Failed to account to persons interested for money or property **the licensee or endorsee**
 22 received in connection with a mortgage loan.

23 (8) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging
 24 in or continuing conduct or a practice that involves an aspect of the mortgage business.

25 (9) Is subject to an order of the director that denies, suspends, conditions or revokes a license
 26 **or endorsement.**

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

29 (11) Does not have the experience required by ORS 86A.106 *[(2) or (3)]* **(2)(a) or (b).**

30 (12) Failed to comply with the requirements of ORS 86A.112 to make and keep records *[pre-*
 31 *scribed by rule or order of]* the director **prescribes by rule or order**, to produce *[such]* records
 32 *[required by]* the director **requires** or to file any financial reports or other information the director
 33 by rule or order may require.

34 (13) Is subject to an order of the director that denies, suspends, conditions or revokes a license
 35 **or endorsement** under any other law the director administers.

36 (14) Is subject to a cease and desist order the director entered within the previous five years
 37 after the applicant or licensee **or endorsee** had notice and an opportunity for a hearing.

38 (15) Demonstrated negligence or incompetence in performing any act for which the licensee **or**
 39 **endorsee** is required to hold a license **or endorsement.**

40 (16) Failed to supervise diligently and control the mortgage-related activities of a mortgage loan
 41 originator the licensee **or endorsee** employs.

42 (17) Knowingly misrepresented to the director the training of, examination of or continuing ed-
 43 ucation time earned by a mortgage loan originator the licensee **or endorsee** employs.

44 (18) Willfully or repeatedly employed individuals as mortgage loan originators who do not meet
 45 the training, education or continuing education requirements for mortgage loan originators.

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

3 **(20) As a mortgage loan servicer, violated a provision of section 27 of this 2015 Act.**

4 **SECTION 11.** ORS 86A.118 is amended to read:

5 86A.118. The Director of the Department of Consumer and Business Services may enter an order
6 against *[the]* **an** applicant, *[or]* **a** licensee **or an endorsee** under ORS 86A.115 if any *[partner, officer*
7 *or director of a mortgage banker or mortgage broker]* **of the applicant's, licensee's or endorsee's**
8 **partners, officers or directors**, any person *[occupying]* **that occupies** a similar status or *[per-*
9 *forming]* **performs** similar functions, or any person **that** directly or indirectly *[controlling the mort-*
10 *gage banker or mortgage broker]* **controls the applicant, the licensee or the endorsee** has been
11 guilty of any act or omission *[which]* **that** would be cause for denying, suspending or revoking the
12 **applicant's, licensee's or endorsee's** license *[of an individual mortgage banker or mortgage*
13 *broker]* **or endorsement**. This section *[shall]* **does** not apply to ORS 86A.115 (1).

14 **SECTION 12.** ORS 86A.121 is amended to read:

15 86A.121. (1) The Director of the Department of Consumer and Business Services may cancel an
16 application, *[or]* **a** license **or an endorsement** if the director finds that the applicant, *[or]* licensee
17 **or endorsee**:

18 (a) Has ceased to do business as a mortgage banker, *[or]* **a** mortgage broker **or a mortgage loan**
19 **servicer**;

20 (b) Has failed to maintain a corporate surety bond or irrevocable letter of credit required under
21 ORS 86A.106 or 86A.227 **or section 6 of this 2015 Act**; or

22 (c) Cannot be located after a reasonable search.

23 (2) A *[mortgage banker or mortgage broker]* **licensee or endorsee** may surrender a license **or**
24 **endorsement** by filing an application to surrender the license **or endorsement**. Unless the director
25 determines that **the director should suspend or revoke** the license *[should be suspended or*
26 *revoked]* **or endorsement**, the director shall allow the surrender subject to any conditions, limita-
27 tions and restrictions the director may impose.

28 **SECTION 13.** ORS 86A.124 is amended to read:

29 86A.124. (1) The Director of the Department of Consumer and Business Services has general
30 supervision and control over mortgage loan originators, mortgage bankers, *[and]* mortgage brokers
31 **and mortgage loan servicers** that reside or do business in this state and that engage in an activity
32 that is subject to the provisions of ORS 86A.095 to 86A.198. The director may examine at any time
33 mortgage bankers and mortgage brokers and the records and activities connected with mortgage
34 bankers, mortgage brokers and mortgage loan originators. The provisions of this section and *[of any*
35 *other section]* **any other provisions** of ORS 86A.095 to 86A.198 *[relating]* **that relate** to examina-
36 tions extend to a person that is or should have been licensed as a mortgage loan originator under
37 ORS 86A.200 to 86A.239, **a person that is** *[or]* licensed as a mortgage banker or mortgage broker,
38 **a person that is licensed or has an endorsement to engage in business as a mortgage loan**
39 **servicer in this state**, a person *[exempted]* **the director exempts** by rule from the definitions of
40 mortgage banker, mortgage broker or mortgage loan originator or a person whose license **or**
41 **endorsement** has expired or has been withdrawn, canceled, suspended, conditioned or revoked. The
42 director may collect from the person the actual expenses incurred in the examination.

43 **(2)(a) The director may examine at any time the books, records and activities of mort-**
44 **gage loan servicers. An examination of a mortgage loan servicer under this section may in-**
45 **clude, but is not limited to, the mortgage loan servicer's servicing practices, the mortgage**

1 loan servicer's ability to address loan modifications and whether the mortgage loan servicer
 2 engages in business as a mortgage loan servicer in this state in a prudent manner and in
 3 compliance with federal and state laws.

4 (b) The director may receive and accept reports from the United States Consumer Fi-
 5 nancial Protection Bureau or other federal or state agencies as part of the director's exam-
 6 ination.

7 (c) The director may collect from a mortgage loan servicer the actual expenses the di-
 8 rector incurs in the examination.

9 [(2)(a)] (3)(a) A mortgage loan document the director obtains as part of an examination under
 10 this section is exempt from disclosure and is confidential for the purposes of ORS 705.137.

11 (b) Any information the director develops, receives or compiles in the course of partic-
 12 ipating in an examination of a mortgage loan servicer under this section is exempt from
 13 disclosure and is confidential for the purposes of ORS 705.137.

14 (c) Notwithstanding the exemption and confidentiality provisions of this subsection, the
 15 director may abstract information the director derives from examinations under this section
 16 and may make the abstracted information available for public inspection, if the abstracted
 17 information does not identify a particular mortgage banker, mortgage broker or mortgage
 18 loan servicer as a source of the information.

19 [(b)] (d) This subsection does not prohibit an individual from inspecting and requesting the di-
 20 rector to disclose any of the individual's mortgage loan documents that the director obtained during
 21 the course of an examination **under paragraph (a) of this subsection**. The director shall
 22 authenticate the individual's identity before disclosing the mortgage loan documents to the individ-
 23 ual.

24 **SECTION 14.** Sections 15 and 16 of this 2015 Act are added to and made a part of ORS
 25 86A.095 to 86A.198.

26 **SECTION 15.** (1) To ensure that a person engages in business as a mortgage loan servicer
 27 in this state in compliance with this chapter and with other law, the Director of the De-
 28 partment of Consumer and Business Services may participate in multistate examinations
 29 with other states or that are coordinated by the Conference of State Bank Supervisors or
 30 the United States Consumer Financial Protection Bureau, or an organization or committee
 31 that succeeds or is an assignee of the Conference of State Bank Supervisors or the United
 32 States Consumer Financial Protection Bureau, in accordance with the protocol for a multi-
 33 state examination.

34 (2) Any information that the director develops, receives or compiles in the course of
 35 participating in a multistate examination of a mortgage loan servicer under this section or
 36 ORS 86A.124 is exempt from disclosure and is confidential for the purposes of ORS 705.137.

37 **SECTION 16.** The Director of the Department of Consumer and Business Services, alone
 38 or in conjunction with another state, may petition a court of competent jurisdiction to ap-
 39 point a receiver to prudently manage the affairs of a mortgage loan servicer if the director
 40 finds that:

41 (1) The mortgage loan servicer cannot continue to engage in business as a mortgage loan
 42 servicer in this state in a prudent manner.

43 (2) The mortgage loan servicer is insolvent under ORS 86A.115 (1).

44 (3) The mortgage loan servicer repeatedly violates a provision of section 27 of this 2015
 45 Act.

1 (4) The mortgage loan servicer fails to provide proof of financial responsibility under
2 section 6 of this 2015 Act.

3 (5) A director or officer of the mortgage loan servicer has abused a consumer's trust or
4 was guilty of misconduct in an official position in a manner that injured the mortgage loan
5 servicer.

6 (6) The mortgage loan servicer neglects or refuses to comply with an order of the Di-
7 rector of the Department of Consumer and Business Services or refuses to submit to an
8 examination under ORS 86A.124 or section 15 of this 2015 Act.

9 (7) A director or officer of the mortgage loan servicer refuses to be examined under oath
10 concerning the mortgage loan servicer's affairs.

11 (8) The mortgage loan servicer fails to deposit or account for a mortgagee's funds in
12 accordance with section 21 of this 2015 Act.

13 **SECTION 17.** ORS 86A.136 is amended to read:

14 86A.136. (1)(a) In accordance with this section and ORS chapter 183, the Director of the De-
15 partment of Consumer and Business Services may from time to time [*make*] **adopt**, amend and
16 rescind [*such*] rules [*as*] **that** are necessary to carry out the provisions of ORS 86A.095 to 86A.198,
17 including but not limited to rules [*governing*] **that govern** the activities of mortgage loan origina-
18 tors, mortgage bankers, [*and*] mortgage brokers and **mortgage loan servicers as well as** rules
19 [*governing*] **that govern** the purchase or sale of mortgage banking loans, mortgage loans or real
20 estate paper in [*coordination*] **accordance** with applicable provisions of, **and rules adopted under**,
21 ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995 [*and rules adopted under the applicable*
22 *provisions*].

23 (b) **Rules the director adopts under ORS 86A.095 to 86A.198 for mortgage loan servicers**
24 **may include but are not limited to rules that:**

25 (A) **Govern how a licensee or endorsee conducts business;**

26 (B) **Define a licensee's duty of care to borrowers;**

27 (C) **Prescribe procedures or required conduct in:**

28 (i) **Paying taxes or insurance premiums; and**

29 (ii) **Crediting payments;**

30 (D) **Prescribe the form and contents of statements of account and the form and manner**
31 **in which a licensee must deliver late payment notices; and**

32 (E) **Define acceptable loss mitigation efforts.**

33 (2) **Unless the director requires otherwise**, a financial statement required under ORS 86A.095
34 to 86A.198 must be prepared in accordance with generally accepted accounting principles. The di-
35 rector may by rule prescribe:

36 (a) The form and content of financial statements required under ORS 86A.095 to 86A.198;

37 (b) The circumstances under which **an applicant, licensee or endorsee must file** consolidated
38 financial statements [*must be filed*]; and

39 (c) Whether **an independent or certified public accountant must certify** any required finan-
40 cial statements [*must be certified by independent or certified public accountants*].

41 **SECTION 18.** ORS 86A.151 is amended to read:

42 86A.151. (1) **A mortgage banker, a mortgage broker, a mortgage loan servicer or a person**
43 **that employs a mortgage loan originator or, under the provisions of ORS 86A.200 to 86A.239, should**
44 **employ a mortgage loan originator is liable as provided in subsection (2) of this section for an**
45 **ascertainable loss of money or property, real or personal, in a residential mortgage transaction if**

1 the **mortgage banker, mortgage broker or person** engages in a residential mortgage transaction
2 **or engages in business as a mortgage loan servicer** [*in which the person*] **and:**

3 (a) Violates a provision of ORS 86A.200 to 86A.239, except ORS 86A.236 (11), or ORS 86A.095
4 to 86A.198, except ORS 86A.115 (4), **or section 27 of this 2015 Act**; or

5 (b)(A)(i) Makes an untrue statement of a material fact; or

6 (ii) Omits from a statement a material fact that would make the statement not misleading in
7 light of the circumstances under which the person makes the statement; and

8 (B) Fails to prove that the person did not know, or in the exercise of reasonable care could not
9 have known, of the untrue statement or omission.

10 (2) [*The person suffering*] **A plaintiff that suffers an** ascertainable loss may recover damages
11 in an amount equal to the ascertainable loss.

12 (3) A person whose sole function in connection with a residential mortgage transaction is to
13 provide ministerial functions of escrow, custody or deposit services in accordance with applicable
14 law is liable only if the person participates or materially aids in the residential mortgage trans-
15 action and the plaintiff sustains the burden of proof that the person knew of the existence of the
16 facts on which liability is based or that the person's failure to know of the existence of the facts
17 was the result of the person's recklessness or gross negligence.

18 (4) Except as otherwise provided in this subsection, **a plaintiff may not commence** an action
19 or suit [*may not be commenced*] under this section more than three years after [*the*] **a residential**
20 mortgage transaction[.] **that violates a provision of subsection (1) of this section. A plaintiff**
21 **may commence** an action under this section for a violation under subsection (1)(b) of this section
22 or ORS 86A.154 [*may be commenced*] within three years after the residential mortgage transaction
23 or two years after the [*person bringing the action*] **plaintiff** discovered or should have discovered the
24 facts on which the action is based, whichever is later, but not later than five years after the date
25 of the residential mortgage transaction. **A plaintiff's** failure to commence an action on a timely
26 basis is an affirmative defense **for the defendant in the action.**

27 (5) **A plaintiff may not commence an action or suit against a mortgage banker, mortgage**
28 **broker or other person that engages in business as a mortgage loan servicer in violation of**
29 **subsection (1) of this section more than two years after the violation or more than two years**
30 **after the plaintiff discovered or should have discovered the facts on which the action is based**
31 **but not later than three years after the date on which the mortgage banker, mortgage bro-**
32 **ker or other person stopped servicing the plaintiff's loan.**

33 [(5)] (6) A person has a right of action under the corporate surety bond or irrevocable letter of
34 credit required under ORS 86A.106 or 86A.227 **or section 6 of this 2015 Act** if the person:

35 (a) [*Initiates*] **Applies for** a mortgage banking loan or mortgage loan [*application*]; and

36 (b) Has a right of action against another person under this section.

37 [(6)] (7) Subsection (3) of this section does not limit a person's liability:

38 (a) For conduct other than in the circumstances described in subsection (3) of this section; or

39 (b) Under any other law.

40 [(7)] (8) Except as provided in subsection [(8)] (9) of this section, [*the*] **a court may award rea-**
41 **sonable attorney fees to the prevailing party in an action under this section.**

42 [(8)] (9) [*The*] **A court may not award attorney fees to a prevailing defendant under the pro-**
43 **visions of subsection [(7)] (8) of this section if the plaintiff maintains the action under this section**
44 [*is maintained*] as a class action [*pursuant to*] **in accordance with ORCP 32.**

45 **SECTION 19.** ORS 86A.154 is amended to read:

1 86A.154. (1) *[It is unlawful for any]* A person **may not**, directly or indirectly, in connection with
 2 *[the conduct of]* **engaging in business as** a mortgage banker, *[or]* a mortgage broker *[business]* **or**
 3 **a mortgage loan servicer in this state:**

4 *[(1)]* (a) *[To]* Employ any device, scheme or artifice to defraud;

5 *[(2)]* (b) Knowingly *[to]* make any untrue statement of a material fact or *[to]* omit to state a
 6 material fact **that is** necessary *[in order]* to make *[the statements made]* **a statement**, in the light
 7 of the circumstances under which *[they are made]* **the person makes the statement**, not mislead-
 8 ing;

9 *[(3)]* (c) *[To]* Engage in any act, practice or course of business *[which]* **that** operates or would
 10 operate as a fraud or deceit upon any person; or

11 *[(4)]* (d) *[To]* Make or file, or cause to be made or filed, to or with the Director of the Depart-
 12 ment of Consumer and Business Services any statement, report or document *[which]* **that the per-**
 13 **son knows** is *[known to be]* false in any material respect or matter.

14 (2) **For purposes of this section, the meanings of “fraud,” “defraud” and “deceit” are not**
 15 **limited to the meaning of common-law deceit.**

16 **SECTION 20. Section 21 of this 2015 Act is added to and made a part of ORS 86A.095 to**
 17 **86A.198.**

18 **SECTION 21. (1) A licensee or endorsee shall deposit all amounts that an Oregon con-**
 19 **sumer pays to the licensee or endorsee into one or more escrow accounts at a federally in-**
 20 **sured financial institution that maintains a branch in this state. The licensee or endorsee**
 21 **shall act as a fiduciary with respect to funds the licensee or endorsee deposits in accordance**
 22 **with this subsection. An escrow account that a licensee or endorsee maintains in accordance**
 23 **with this subsection may contain funds only from Oregon consumers. The licensee or**
 24 **endorsee shall segregate the escrow account from all other accounts that the licensee or**
 25 **endorsee maintains or shall provide histories of the loan accounts for residential mortgage**
 26 **loans in this state to the director, along with escrow account statements that show how,**
 27 **when and where the licensee or endorsee held, applied or distributed payments during the**
 28 **period in which the licensee or endorsee serviced the loan. A licensee or endorsee may not**
 29 **use the funds in the escrow account to conduct the licensee’s or endorsee’s personal affairs**
 30 **or business affairs. The licensee or endorsee may not encumber the corpus of the escrow**
 31 **account.**

32 (2) A licensee or endorsee shall authorize the Director of the Department of Consumer
 33 and Business Services, or a person the director designates, to examine an escrow account
 34 required under subsection (1) of this section at any time the director requires. The licensee
 35 or endorsee shall give the authorization in writing on a form and with the contents that the
 36 director specifies by rule.

37 (3) A licensee or endorsee shall maintain complete and accurate account records includ-
 38 ing, at a minimum, the source of all deposits, the nature and recipient of all disbursements,
 39 the date and amount of each transaction and the name of each borrower. The licensee or
 40 endorsee shall produce all documents that pertain to account activity at the director’s re-
 41 quest.

42 (4) A licensee or endorsee may use funds in an escrow account required under subsection
 43 (1) of this section only to:

44 (a) Make a payment that the borrower or the mortgage loan contract authorizes or that
 45 federal or state law requires;

1 **(b) Make a refund to the borrower;**

2 **(c) Make a transfer to a depository institution;**

3 **(d) Make a transfer to the appropriate mortgage lender or mortgage loan servicer if the**
4 **licensee or endorsee is transferring responsibility for servicing the loan;**

5 **(e) Meet a purpose that the mortgage loan contract authorizes; or**

6 **(f) Comply with an order of the director or a court of competent jurisdiction.**

7 **SECTION 22.** ORS 86A.163 is amended to read:

8 86A.163. A [*mortgage banker or mortgage broker shall*] **licensee or endorsee or a person that**
9 **is otherwise subject to ORS 86A.095 to 86A.198 may** not use or cause to be published any ad-
10 vertisement that:

11 (1) Contains any false, misleading or deceptive statement or representation; or

12 (2) Identifies the [*mortgage banker or mortgage broker*] **licensee, endorsee or other person** by
13 any name other than the name listed on the license **or endorsement** [*issued by*] **that** the Director
14 of the Department of Consumer and Business Services **issued**, or an assumed business name **that**
15 **is** registered under ORS chapter 648.

16 **SECTION 23.** ORS 86A.166 is amended to read:

17 86A.166. (1) Every [*licensed mortgage banker and mortgage broker*] **licensee or endorsee** shall
18 designate and maintain a principal place of business for the transaction of business.

19 (2) If a [*licensed mortgage banker or mortgage broker*] **licensee or endorsee** intends to [*transact*
20 *business*] **engage in business as a mortgage banker, mortgage broker or mortgage loan**
21 **servicer in this state** at any place other than the principal place of business, the licensee **or**
22 **endorsee** shall [*notify*] **obtain or have amended a license or endorsement from** the Director of
23 the Department of Consumer and Business Services[, *in writing, not later than 30 days prior to*
24 *opening another office*] **before engaging in business as a mortgage banker, mortgage broker or**
25 **mortgage loan servicer in this state at a location other than the principal place of business.**
26 The [*notice shall*] **director shall issue or amend the license or endorsement after due consid-**
27 **eration of the requirements set forth in ORS 86A.106 and in the license, amended license or**
28 **endorsement shall show** [*contain*] the address of the principal office and of any other [*office*] **of**
29 **the licensee's or endorsee's offices.** A licensee or endorsee shall display a copy of the license
30 **or endorsement** [*issued to the mortgage banker or mortgage broker shall be displayed in each place*
31 *of business of the licensee*] **in each of the licensee's or endorsee's places of business.**

32 (3) If [*there is any*] a change **occurs** among the members, officers, partners or directors of any
33 licensee **or endorsee**, the licensee **or endorsee** shall notify the director within 30 days [*of*] **after**
34 **the change occurs of** the name, address and occupation of each new member, officer, partner or
35 director, and **shall** provide any other information the director may require.

36 (4) A mortgage banker, [*or*] mortgage broker **or mortgage loan servicer** [*whose*] **with a** prin-
37 cipal place of business **that** is not in this state shall continuously maintain a registered agent in this
38 state. The **mortgage banker, mortgage broker or mortgage loan servicer shall include the**
39 name and address of the agent [*shall be included in the*] **in an** application for a license **or**
40 **endorsement.** A mortgage banker, [*or*] mortgage broker **or mortgage loan servicer** shall notify the
41 director immediately of any change in the name or address of the registered agent.

42 (5) The registered agent of a mortgage banker, [*or*] a mortgage broker **or a mortgage loan**
43 **servicer** [*shall*] **must** be an agent upon whom any process, notice or demand required or permitted
44 by law to be served upon the mortgage banker, [*or*] mortgage broker **or mortgage loan servicer**
45 may be served. The director [*shall be*] **is** an agent of a mortgage banker, a [*or*] mortgage broker **or**

1 **a mortgage loan servicer** *[if the mortgage banker or mortgage broker]* **that** fails to appoint or
 2 maintain a registered agent in this state or **if** the registered agent cannot with reasonable diligence
 3 be found.

4 **SECTION 24.** ORS 86A.169 is amended to read:

5 86A.169. *[Prior to the]* **Before** closing *[of]* any mortgage loan or any mortgage banking loan,
 6 *[the]* **a mortgage banker or mortgage broker** shall supply the borrower with a disclosure as required
 7 by the real estate lending provisions of 15 U.S.C. 1601 et seq. and Regulation Z, 12 C.F.R. Part
 8 **[226] 1024, as in effect on the operative date specified in section 31 of this 2015 Act.**

9 **SECTION 25.** ORS 86A.183 is amended to read:

10 86A.183. (1)(a) A mortgage banker, mortgage broker, **mortgage loan servicer** or mortgage loan
 11 originator may not:

12 *[(a)]* **(A)** Engage in dishonest, fraudulent or illegal practices or conduct in a business or pro-
 13 fession or engage in unfair or unethical practices or conduct in connection with the mortgage
 14 business[.];

15 *[(b)]* **(B)** Willfully or repeatedly violate or fail to comply with a provision of ORS 86A.095 to
 16 86A.198 or 86A.200 to 86A.239 or a rule or order of the Director of the Department of Consumer
 17 and Business Services[.]; **or**

18 *[(c)]* **(C)** Fail to account to persons interested for money or property **the mortgage banker,**
 19 **mortgage broker, mortgage loan servicer or mortgage loan originator** received in connection
 20 with a mortgage loan.

21 **(b) A mortgage loan originator may not:**

22 *[(d)]* **(A)** Fail to meet the training, education or continuing education requirements for mortgage
 23 loan originators set forth in ORS 86A.215 or 86A.221[.]; **or**

24 *[(e)]* **(B)** Perform an act as a mortgage loan originator in a negligent or incompetent manner.

25 (2) *[An individual may not be employed by]* A mortgage banker, **a** *[or]* mortgage broker **or a**
 26 **mortgage loan servicer may not employ an individual** as a mortgage loan originator if:

27 (a) The individual was convicted of a crime or category of crime *[specified by]* the director
 28 **specifies** by rule;

29 (b) The individual is suspended or has been prohibited from employment as a mortgage loan
 30 originator under ORS 86A.224;

31 (c) The employment violates any conditions imposed under ORS 86A.224; or

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

34 **SECTION 26.** Section 27 of this 2015 Act is added to and made a part of ORS 86A.095 to
 35 **86A.198.**

36 **SECTION 27.** A mortgage loan servicer may not:

37 **(1) Engage in any unfair or deceptive practice toward any person or misrepresent or omit**
 38 **any material information in connection with servicing a residential mortgage loan, including**
 39 **but not limited to misrepresenting the amount, nature or terms of any fee or payment due**
 40 **or claimed to be due on a residential mortgage loan, the terms and conditions of the servic-**
 41 **ing agreement or the mortgagor's obligations under the residential mortgage loan;**

42 **(2) Fail to comply with the mortgage loan servicing transfer, escrow account adminis-**
 43 **tration, or borrower inquiry response requirements imposed by the Real Estate Settlement**
 44 **Procedures Act, 12 U.S.C. 2601 et seq. and Regulation X, 12 C.F.R. Part 1024, as in effect on**
 45 **the operative date specified in section 31 of this 2015 Act;**

1 (3)(a) Fail to provide written notice to a borrower before placing hazard, homeowner or
2 flood insurance on mortgaged property; or

3 (b) Place hazard, homeowner or flood insurance on a mortgaged property if the mortgage
4 loan servicer knows or has reason to know that there is insurance in effect;

5 (4) Place hazard insurance, homeowner insurance or flood insurance on a mortgaged
6 property for an amount that exceeds either the value of the insurable improvements or the
7 last-known coverage amount of insurance;

8 (5) Fail to refund to the borrower unearned premiums the borrower paid or that the
9 mortgage loan servicer charged to the borrower for hazard insurance, homeowner insurance
10 or flood insurance that a lender or mortgage loan servicer placed, if the borrower provides
11 reasonable proof that the borrower has obtained coverage so that the mortgaged property
12 is insured and the insurance the lender or mortgage loan servicer placed is no longer nec-
13 essary;

14 (6) Fail to refund the entire premium the borrower paid for or that the mortgage loan
15 servicer charged to the borrower for hazard insurance, homeowner insurance or flood in-
16 surance a lender or the mortgage loan servicer placed on the mortgaged property, if the
17 borrower provides reasonable proof within 12 months after the placement that no lapse in
18 insurance coverage occurred so that the insurance the lender or mortgage loan servicer
19 placed was not necessary;

20 (7) Obtain property by fraud or misrepresentation;

21 (8) Knowingly misapply or recklessly apply residential mortgage loan payments to the
22 outstanding balance of a residential mortgage loan; or

23 (9) Fail to make payments for insurance, taxes and other charges with respect to the
24 property in a timely manner from any escrow account the mortgage loan servicer holds for
25 the borrower, whether the loan is delinquent or not, so as to prevent late penalties or other
26 negative consequences, unless the escrow account does not have sufficient funds to cover the
27 payments and the mortgage loan servicer has a reasonable basis to believe that the mortgage
28 loan servicer will not recover any moneys the mortgage loan servicer pays.

29 **SECTION 28.** ORS 646.633 is amended to read:

30 646.633. (1) For purposes of this section, "state regulated lender" means:

31 (a) A banking institution as defined in ORS 706.008;

32 (b) A credit union as defined in ORS 723.006;

33 (c) A person that is required to be licensed under ORS 725.045;

34 (d) A pawnbroker, as defined in ORS 726.010, that is required to be licensed under ORS chapter
35 726; or

36 (e) A mortgage banker, mortgage broker, **mortgage loan servicer** or **mortgage** loan originator,
37 as those terms are defined in ORS 86A.100 or **86A.200**, that is required to *[be licensed]* **obtain a li-**
38 **cense or endorsement** under ORS 86A.095 to 86A.198 or **86A.200 to 86A.239**.

39 (2) A prosecuting attorney may not take action under ORS 646.618 or 646.632 with respect to
40 an alleged unlawful practice under ORS 646.607 or 646.608 *[when]* **if a state regulated lender en-**
41 **gaged in the conduct and** the conduct involves loans or extensions of credit, *[and was engaged in*
42 *by a state regulated lender]* unless *[requested to do so by]* the Director of the Department of Con-
43 sumer and Business Services **requests the action**. In any action *[requested to be taken by]* the di-
44 rector **requests the prosecuting attorney to take** under this subsection, the director may elect
45 to be named as a party to the proceeding or suit.

1 (3) The Attorney General may not adopt rules under ORS 646.608 (4) with respect to conduct
 2 *[involving]* **that a state regulated lender engages in and that involves** loans or extensions of
 3 credit *[that is engaged in by a state regulated lender except with the prior review and approval of the*
 4 *proposed rules by the director]* **unless the director first reviews and approves the proposed**
 5 **rules.** The Attorney General may not adopt rules under ORS 646.608 (4) with respect to conduct
 6 **that a state regulated lender engages in and that involves** *[involving]* loans or extensions of
 7 credit *[that is engaged in by a state regulated lender]* except as provided in this subsection.

8 (4) As soon as practicable upon receipt, the Attorney General shall provide the director with
 9 copies of any complaint or other initial pleading or any judgment received under ORS 646.638
 10 *[when]* **if** the action involves the conduct of a state regulated lender.

11 **SECTION 29. ORS 86A.175 is repealed.**

12 **SECTION 30. Sections 6, 7, 15, 16, 21 and 27 of this 2015 Act, the amendments to ORS**
 13 **86A.095, 86A.100, 86A.103, 86A.106, 86A.109, 86A.112, 86A.115, 86A.118, 86A.121, 86A.124,**
 14 **86A.136, 86A.151, 86A.154, 86A.163, 86A.166, 86A.169, 86A.183 and 646.633 by sections 1 to 4, 8**
 15 **to 13, 17 to 19, 22 to 25 and 28 of this 2015 Act and the repeal of ORS 86A.175 by section 29**
 16 **of this 2015 Act apply to mortgage loan transactions that occur on and after the operative**
 17 **date specified in section 31 of this 2015 Act.**

18 **SECTION 31. (1) Sections 6, 7, 15, 16, 21 and 27 of this 2015 Act, the amendments to ORS**
 19 **86A.095, 86A.100, 86A.103, 86A.106, 86A.109, 86A.112, 86A.115, 86A.118, 86A.121, 86A.124,**
 20 **86A.136, 86A.151, 86A.154, 86A.163, 86A.166, 86A.169, 86A.183 and 646.633 by sections 1 to 4, 8**
 21 **to 13, 17 to 19, 22 to 25 and 28 of this 2015 Act and the repeal of ORS 86A.175 by section 29**
 22 **of this 2015 Act become operative on January 1, 2016.**

23 (2) The Director of the Department of Consumer and Business Services, before the op-
 24 erative date specified in subsection (1) of this section, may adopt rules and take any other
 25 action that is necessary to enable the director to exercise, on and after the operative date
 26 specified in subsection (1) of this section, all of the duties, functions and powers conferred
 27 on the director by sections 6, 7, 15, 16, 21 and 27 of this 2015 Act and the amendments to
 28 ORS 86A.095, 86A.100, 86A.103, 86A.106, 86A.109, 86A.112, 86A.115, 86A.118, 86A.121, 86A.124,
 29 86A.136, 86A.151, 86A.154, 86A.163, 86A.166, 86A.169, 86A.183 and 646.633 by sections 1 to 4, 8
 30 to 13, 17 to 19, 22 to 25 and 28 of this 2015 Act.

31 **SECTION 32. This 2015 Act being necessary for the immediate preservation of the public**
 32 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
 33 **on its passage.**

34