



1997 ASSEMBLY BILL 830

February 25, 1998 - Introduced by COMMITTEE ON FINANCIAL INSTITUTIONS, by request of Department of Financial Institutions. Referred to Committee on Financial Institutions.

1 **AN ACT to repeal** 224.70, 224.71 (1r) (b) and 224.72 (5) (b) 2.; **to renumber and**
2 **amend** 224.71 (1r) (a), 224.71 (2), 224.72 (4) (intro.), 224.72 (4) (a), 224.72 (4)
3 (b), 224.72 (4) (c) and 224.72 (5) (b) 1.; **to amend** subchapter II (title) of chapter
4 224 [precedes 224.70], 224.71 (3) (a) 3., 224.72 (title), 224.72 (1m), 224.72 (2)
5 (intro.), 224.72 (2) (b), 224.72 (3), 224.72 (5) (a), 224.73, 224.74 (title), 224.74 (2)
6 (a), 224.74 (2) (b), 224.75 (title), 224.75 (1) (title), 224.75 (1) (a), 224.75 (1) (b)
7 (intro.), 224.75 (1) (c) (intro.), 224.75 (2), 224.75 (3), 224.75 (4), 224.75 (5),
8 224.76, 224.77 (title), 224.77 (1) (intro.), 224.77 (1) (a), 224.77 (1) (e), 224.77 (1)
9 (f), 224.77 (1) (h), 224.77 (1) (i), 224.77 (1) (k), 224.77 (1) (L), 224.77 (1) (o),
10 224.77 (2), 224.77 (3), 224.77 (4), 224.77 (5) (a), 224.78, 224.80 (2) (intro.),
11 224.81, 224.82, 422.501 (2) (b) 8., 708.10 (1) (c) and 943.62 (2m); **to repeal and**
12 **recreate** 224.72 (7), 224.72 (8) and 224.74 (1); and **to create** 224.71 (1b), 224.71
13 (1c), 224.71 (3) (b) 6., 224.71 (5), 224.72 (4) (a) 1. a. to d., 224.72 (4) (a) 3., 224.72
14 (4) (d), 224.72 (4m), 224.72 (4n), 224.72 (4r), 224.75 (1) (d), 224.77 (1) (r), 224.77
15 (1m), 224.77 (3m) and 224.77 (6) of the statutes; **relating to:** registration

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1 requirements for loan originators, mortgage bankers and mortgage brokers,
2 providing an exemption from emergency rule procedures, granting
3 rule-making authority and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes to the regulation of mortgage bankers, loan originators and mortgage brokers (which are called loan solicitors under current law). These changes include the following:

Persons subject to registration and regulation

Current law requires loan originators, loan solicitors and mortgage bankers to register with the department of financial institutions (DFI). Under current law, a mortgage banker is someone who is not exempt and who does any of the following: 1) originates loans; 2) sells loans or interests in loans to others; or 3) services loans or land contracts or provides escrow services for another person for compensation. The bill broadens this provision to include all persons who service loans or land contracts or provide escrow services to another person, regardless of whether the person does it for compensation. The bill also adds an exemption from the definition of mortgage banker for a person who originates, sells or services loans only with the person's own funds for the person's own investment and originated, sold or serviced no more than 4 loans during the previous 12 months.

Current law defines a loan solicitor as someone who is not exempt from the definition and who, on behalf of a loan applicant or an investor and for commission, money or other thing of value, finds a loan or negotiates a land contract, loan or commitment for a loan. This bill changes the term "loan solicitor" to the term "mortgage broker", but does not change the definition.

Current law defines a loan originator as someone who is not exempt and who, on behalf of a mortgage banker, finds or negotiates a land contract, loan or commitment for a loan. There a number of exemptions from this definition, including exemptions for banks, trust companies, savings banks, savings and loan associations, credit unions and insurance companies and for employes of these exempt entities when acting in the scope of their employment. This bill eliminates all of these exemptions, but modifies the definition of loan originator to cover only persons who are employed by mortgage banker or mortgage broker to find or negotiate a land contract, loan or commitment for a loan.

Registration requirements

Under current law, an applicant for registration as a mortgage banker must do at least one of the following: 1) demonstrate approval as a mortgagee by the federal department of housing and urban development; 2) file a \$25,000 surety bond; or 3) demonstrate a minimum net worth of \$25,000 and a warehouse line of credit of not less than \$250,000, or a minimum net worth of \$100,000. This bill modifies these requirements. Under the bill, these registration requirements vary depending on whether the mortgage banker has a "bona fide office" in this state. In general, a "bona

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“bona fide office” is a separate office with regular hours of operation that is open to the public, is used for transacting business and is staffed by a registered individual who is not shared with another business. If the applicant is applying to be a mortgage banker that maintains a bona fide office, the applicant must do one of the following: 1) demonstrate approval as a mortgage banker by the federal department of housing and urban development, the Federal National Mortgage Association, the Government National Mortgage Association or the Federal Home Loan Mortgage Corporation; 2) file a \$25,000 commercial surety bond; 3) file a secured personal bond or secured 3rd party guarantee in the amount of \$25,000; or 4) demonstrate a minimum net worth of \$100,000 or must demonstrate a minimum net worth of \$25,000 and a warehouse line of credit of not less than \$250,000. If the applicant is applying to be a mortgage banker that will not maintain a bona fide office, the applicant must file a \$300,000 commercial surety bond and demonstrate a minimum net worth of \$250,000.

Currently, mortgage brokers are not required to meet requirements similar to those discussed above for mortgage bankers. This bill establishes similar requirements for mortgage broker applicants. If the applicant is applying to be a mortgage broker who will maintain a bona fide office, the applicant must do one of the following: 1) to file a \$10,000 commercial surety bond; 2) file a secured personal bond or secured 3rd party guarantee in the amount of \$10,000; or 3) demonstrate a minimum net worth of \$100,000. If the applicant is applying to be a mortgage broker that will not maintain a bona fide office, the applicant must file a \$120,000 commercial surety bond and demonstrate a minimum net worth of \$250,000.

The bill also specifies when the division may release security posted by a mortgage banker or mortgage broker applicant, if the mortgage banker or mortgage broker chooses to meet these registration requirements by posting a secured personal bond or guarantee. Under the bill, if the division determines that the security has become insufficient, or that a surety bond or an errors and omissions insurance policy has lapsed, the division may suspend the mortgage banker’s or mortgage broker’s registration.

The bill also modifies the procedures that the division uses to register mortgage bankers or mortgage brokers. Under current law, a mortgage banker applicant is granted a temporary certificate of registration for 6 months, after which the division may issue a regular registration. This bill eliminates the temporary certificate provisions. Current law specifies fees for applying for, renewing and transferring registrations as mortgage bankers, mortgage brokers and loan originators; the bill repeals these provisions and grants the division the authority to set these fees by rule.

Regulation

Under current law, registered mortgage bankers and mortgage brokers must submit a copy of an annual audit of the mortgage banker’s or mortgage broker’s operations to DFI within 20 days after the audit is completed. The bill specifies some additional requirements for the annual audit, requires mortgage bankers and mortgage brokers to submit an annual report in a form specified by the division and, if the division believes that a mortgage banker or mortgage broker may not have sufficient financial resources, allows the division to require the mortgage banker or

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- 1 (a) Is located in this state.
- 2 (b) Has regular hours of operation.
- 3 (c) Is accessible to the public.
- 4 (d) Serves as an office for the transaction of business.
- 5 (e) Is staffed by an individual registered under this subchapter who is an
6 employe of the mortgage banker or mortgage broker and is not shared with another
7 business.
- 8 (f) Is separate from the offices of other entities.
- 9 (g) Contains the books and records of the mortgage banker or mortgage broker,
10 or copies of the books and records, unless the mortgage banker or mortgage broker
11 has agreed to furnish copies of its books and records, as soon as practicable, upon the
12 request of the division.

13 **SECTION 4.** 224.71 (1c) of the statutes is created to read:

14 224.71 (1c) "Division" means the division of banking.

15 **SECTION 5.** 224.71 (1r) (a) of the statutes is renumbered 224.71 (1r) and
16 amended to read:

17 224.71 (1r) "Loan originator" means a person who is ~~not excluded by par. (b)~~
18 ~~and who, on behalf of~~ employed by a mortgage banker, ~~finds or mortgage broker to~~
19 find a loan or ~~negotiates~~ negotiate a land contract, loan or commitment for a loan.

20 **SECTION 6.** 224.71 (1r) (b) of the statutes, as affected by 1997 Wisconsin Act 27,
21 is repealed.

22 **SECTION 7.** 224.71 (2) of the statutes, as affected by 1997 Wisconsin Act 27, is
23 renumbered 224.71 (4), and 224.71 (4) (a) and (b) (intro.), as renumbered, are
24 amended to read:

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1 224.71 (4) (a) ~~“Loan solicitor”~~ “Mortgage broker” means a person who is not
2 excluded by par. (b) and who, on behalf of a loan applicant or an investor and for
3 commission, money or other thing of value, finds a loan or negotiates a land contract,
4 loan or commitment for a loan or engages in table funding.

5 (b) (intro.) ~~“Loan solicitor”~~ “Mortgage broker” does not include any of the
6 following:

7 **SECTION 8.** 224.71 (3) (a) 3. of the statutes is amended to read:

8 224.71 (3) (a) 3. Services loans or land contracts or provides escrow services,
9 ~~for another person and for commission, money or other thing of value.~~

10 **SECTION 9.** 224.71 (3) (b) 6. of the statutes is created to read:

11 224.71 (3) (b) 6. A person who originates, sells, or services loans only with the
12 person’s own funds for the person’s own investment and the person has originated,
13 sold or serviced no more than 4 loans during the previous 12 months.

14 **SECTION 10.** 224.71 (5) of the statutes is created to read:

15 224.71 (5) “Table funding” means a transaction in which a person conducts a
16 loan closing in the person’s name with funds provided by a 3rd party and the person
17 assigns the loan to the 3rd party within 24 hours of the loan closing.

18 **SECTION 11.** 224.72 (title) of the statutes is amended to read:

19 **224.72 (title) Registration of mortgage bankers, loan originators and**
20 **~~loan solicitors~~ mortgage brokers.**

21 **SECTION 12.** 224.72 (1m) of the statutes is amended to read:

22 224.72 (1m) REGISTRATION REQUIRED. A person may not act as a mortgage
23 banker, loan originator or ~~loan solicitor~~ mortgage broker, use the title “mortgage
24 banker”, “loan originator” or ~~“loan solicitor”~~ “mortgage broker”, or advertise or
25 otherwise portray himself or herself as a mortgage banker, loan originator or ~~loan~~

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1 ~~solicitor~~ mortgage broker, unless the person has been issued a certificate of
2 registration from the ~~department~~ division.

3 **SECTION 13.** 224.72 (2) (intro.) of the statutes is amended to read:

4 224.72 (2) APPLYING FOR REGISTRATION. (intro.) A person desiring to act as a
5 mortgage banker, loan originator or ~~loan solicitor~~ mortgage broker shall apply for a
6 certificate of registration to the ~~department~~ division on forms prescribed by the
7 ~~department~~ division and shall pay the fee specified in rules promulgated under sub.
8 (8) (a). An application shall satisfy all of the following:

9 **SECTION 14.** 224.72 (2) (b) of the statutes is amended to read:

10 224.72 (2) (b) *Identity of partner, member or officer.* If the applicant is a
11 partnership, limited liability company or corporation, the application shall identify
12 each partner, member or officer who will use the title “mortgage banker”, “loan
13 originator” or “~~loan solicitor~~” “mortgage broker”.

14 **SECTION 15.** 224.72 (3) of the statutes is amended to read:

15 224.72 (3) ADDITIONAL REQUIREMENT FOR LOAN ORIGINATOR APPLICANT. In addition
16 to the requirements of sub. (2), an applicant for registration as a loan originator shall
17 include in the application the name of the mortgage banker or mortgage broker who
18 will employ the loan originator.

19 **SECTION 16.** 224.72 (4) (intro.) of the statutes is renumbered 224.72 (4) (a)
20 (intro.) and amended to read:

21 224.72 (4) (a) (title) With a bona fide office. (intro.) In addition to the
22 requirements of sub. (2), an applicant for registration as a mortgage banker who
23 maintains a bona fide office shall do at least one of the following:

24 **SECTION 17.** 224.72 (4) (a) of the statutes is renumbered 224.72 (4) (a) 1. (intro.)
25 and amended to read:

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1 224.72 (4) (a) 1. 'Approval by federal agency.' (intro.) Submit evidence which
2 shows, to the department's division's satisfaction, that ~~the federal department of~~
3 ~~housing and urban development has~~ one or more of the following have approved the
4 applicant as a mortgagee.:

5 **SECTION 18.** 224.72 (4) (a) 1. a. to d. of the statutes are created to read:

6 224.72 (4) (a) 1. a. The federal department of housing and urban development.

7 b. The Federal National Mortgage Association.

8 c. The Government National Mortgage Association.

9 d. The Federal Home Loan Mortgage Corporation.

10 **SECTION 19.** 224.72 (4) (a) 3. of the statutes is created to read:

11 224.72 (4) (a) 3. 'Other bond or guarantee.' File a personal bond or 3rd-party
12 guarantee in the amount of \$25,000 in a form acceptable to the division and secured
13 by one of the following forms of security:

14 a. A certificate of deposit.

15 b. A debt security acceptable to the division.

16 c. An irrevocable bank letter of credit issued by a financial institution that is
17 authorized to do business in this state or that is federally chartered.

18 **SECTION 20.** 224.72 (4) (b) of the statutes is renumbered 224.72 (4) (a) 2. and
19 amended to read:

20 224.72 (4) (a) 2. 'File a bond.' File with the ~~department a~~ division a commercial
21 surety bond which is in the amount of \$25,000, is furnished issued by a surety
22 company authorized to do business in this state and is approved by the department,
23 secures the applicant's faithful performance of all duties and obligations of a
24 mortgage banker, is payable to the division for the benefit of persons to whom the
25 mortgage banker provided services as a mortgage banker, is issued on a form that

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1 is acceptable to the division and provides that the bond may not be terminated
2 without at least 30 days' written notice to the division.

3 **SECTION 21.** 224.72 (4) (c) of the statutes is renumbered 224.72 (4) (a) 4. and
4 amended to read:

5 224.72 (4) (a) 4. 'Minimum net worth.' Submit evidence that establishes, to the
6 department's division's satisfaction, a minimum net worth of \$25,000 and a
7 warehouse line of credit of not less than \$250,000 or a minimum net worth of
8 \$100,000. Evidence of net worth shall include the submission of a balance sheet that
9 is accompanied by a written statement by an independent certified public accountant
10 attesting that he or she has reviewed the balance sheet in accordance with generally
11 accepted accounting principles.

12 **SECTION 22.** 224.72 (4) (d) of the statutes is created to read:

13 224.72 (4) (d) *Without a bona fide office.* In addition to the requirements of sub.
14 (2), an applicant for registration as a mortgage banker who does not maintain a bona
15 fide office shall do all of the following:

16 1. 'File a bond.' File with the division a commercial surety bond that is in the
17 amount of \$300,000, is issued by a surety company authorized to do business in this
18 state, secures the applicant's faithful performance of all duties and obligations of a
19 mortgage banker, is payable to the division for the benefit of persons to whom the
20 mortgage banker provided services as a mortgage banker, is issued on a form that
21 is acceptable to the division and provides that the bond may not be terminated
22 without at least 30 days' written notice to the division.

23 2. 'Minimum net worth.' Submit evidence that establishes, to the division's
24 satisfaction, a minimum net worth of \$250,000. Evidence of net worth shall include
25 the submission of a balance sheet that is accompanied by a written statement by an

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1 independent certified public accountant attesting that he or she has reviewed the
2 balance sheet in accordance with generally accepted accounting principles.

3 **SECTION 23.** 224.72 (4m) of the statutes is created to read:

4 224.72 (4m) ADDITIONAL REQUIREMENT FOR MORTGAGE BROKER APPLICANT. (a)
5 *With a bona fide office.* In addition to the requirements of sub. (2), an applicant for
6 registration as a mortgage broker who maintains a bona fide office shall do at least
7 one of the following:

8 1. 'File a bond.' File with the division a commercial surety bond that is in the
9 amount of \$10,000, is issued by a surety company authorized to do business in this
10 state, secures the applicant's faithful performance of all duties and obligations of a
11 mortgage broker, is payable to the division for the benefit of persons to whom the
12 mortgage broker provided services as a mortgage broker, is issued on a form that is
13 acceptable to the division and provides that the bond may not be terminated without
14 at least 30 days' written notice to the division.

15 2. 'Other bond or guarantee.' File a personal bond or 3rd-party guarantee in
16 the amount of \$10,000 in a form acceptable to the division and secured by one of the
17 following forms of security:

18 a. A certificate of deposit.

19 b. A debt security acceptable to the division.

20 c. An irrevocable bank letter of credit issued by a financial institution that is
21 authorized to do business in this state or that is federally chartered.

22 3. 'Minimum net worth.' Submit evidence that establishes, to the division's
23 satisfaction, a minimum net worth of \$100,000. Evidence of net worth shall include
24 the submission of a balance sheet that is accompanied by a written statement by an

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1 independent certified public accountant attesting that he or she has reviewed the
2 balance sheet in accordance with generally accepted accounting principles.

3 (b) *Without a bona fide office.* In addition to the requirements of sub. (2), an
4 applicant for registration as a mortgage broker who does not maintain a bona fide
5 office shall do all of the following:

6 1. 'File a bond.' File with the division a commercial surety bond that is in the
7 amount of \$120,000, is issued by a surety company authorized to do business in this
8 state, secures the applicant's faithful performance of all duties and obligations of a
9 mortgage broker, is payable to the division for the benefit of persons to whom the
10 mortgage broker provided services as a mortgage broker, is issued on a form that is
11 acceptable to the division and provides that the bond may not be terminated without
12 at least 30 days' written notice to the division.

13 2. 'Minimum net worth.' Submit evidence that establishes, to the division's
14 satisfaction, a minimum net worth of \$250,000. Evidence of net worth shall include
15 the submission of a balance sheet that is accompanied by a written statement by an
16 independent certified public accountant attesting that he or she has reviewed the
17 balance sheet in accordance with generally accepted accounting principles.

18 **SECTION 24.** 224.72 (4n) of the statutes is created to read:

19 224.72 (4n) SECURITY HELD BY THE DIVISION; RELEASE. The division or its agent
20 shall hold security filed under subs. (4) (a) 3. and (4m) (a) 2. The security shall
21 remain in effect, and the division may not release it, until all of the following
22 conditions are met:

23 (a) A period of 180 days has elapsed since at least one of the following:

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1 1. The date on which the mortgage banker or mortgage broker gives notice to
2 the division that the mortgage banker or mortgage broker is no longer acting as a
3 mortgage banker or mortgage broker.

4 2. The date on which the mortgage banker's or mortgage broker's registration
5 expires or is revoked.

6 (b) The division determines that the mortgage banker or mortgage broker is no
7 longer in business.

8 (c) The division determines that all claims of persons to whom the mortgage
9 banker or mortgage broker provided services as a mortgage banker or mortgage
10 broker have been satisfied.

11 **SECTION 25.** 224.72 (4r) of the statutes is created to read:

12 224.72 (4r) INSUFFICIENT SECURITY; DIVISION ORDER; SUSPENSION OF REGISTRATION.
13 If the division finds that the surety bond, security or insurance policy filed by a
14 mortgage banker or mortgage broker has been cancelled without the required notice
15 to the division, the division may summarily suspend the mortgage banker's or
16 mortgage broker's registration.

17 **SECTION 26.** 224.72 (5) (a) of the statutes is amended to read:

18 224.72 (5) (a) (title) *Loan originator and loan solicitor*. Upon receiving a
19 properly completed application for registration as a loan originator ~~or loan solicitor~~
20 and the fee specified in rules promulgated under sub. (8) (a), the ~~department shall~~
21 division may issue to the applicant a certificate of registration as a loan originator
22 ~~or loan solicitor~~.

23 **SECTION 27.** 224.72 (5) (b) 1. of the statutes, as affected by 1997 Wisconsin Acts
24 27 and 35, is renumbered 224.72 (5) (b) and amended to read:

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1 224.72 (5) (b) (title) *Mortgage banker and mortgage broker*. Upon receiving a
2 properly completed application for registration as a mortgage banker or a mortgage
3 broker, the fee specified in rules promulgated under sub. (8) ~~(b)~~ and satisfactory
4 evidence of compliance with ~~sub.~~ subs. (4) and (4m), the ~~department shall~~ division
5 may issue to the applicant a ~~temporary~~ certificate of registration as a mortgage
6 banker. ~~A temporary certificate of registration is valid for 6 months after the date~~
7 ~~of issuance or mortgage broker.~~

8 **SECTION 28.** 224.72 (5) (b) 2. of the statutes is repealed.

9 **SECTION 29.** 224.72 (7) of the statutes, as affected by 1997 Wisconsin Act 27,
10 is repealed and recreated to read:

11 224.72 (7) RENEWAL OF REGISTRATION. (a) A loan originator, mortgage broker
12 or mortgage banker shall renew a certificate of registration by submitting to the
13 division a renewal application and the renewal fee specified in rules promulgated
14 under sub. (8) on or before the renewal date specified in rules promulgated under sub.
15 (8).

16 (b) An applicant for renewal of a certificate of registration as a mortgage banker
17 shall, as part of the application, do the following:

18 1. For a mortgage banker who maintains a bona fide office, refile a bond that
19 satisfies sub. (4) (a) 2. or 3. or resubmit evidence that satisfies sub. (4) (a) 1. or 4.

20 2. For a mortgage banker who does not maintain a bona fide office, refile a bond
21 that satisfies sub. (4) (d) 1. and resubmit evidence that satisfies sub. (4) (d) 2.

22 (c) An applicant for renewal of a certificate of registration as a mortgage broker
23 shall, as part of the application, do the following:

24 1. For a mortgage broker who maintains a bona fide office, refile a bond that
25 satisfies sub. (4m) (a) 1. or 2. or resubmit evidence that satisfies sub. (4m) (a) 3.

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1 2. For a mortgage broker who does not maintain a bona fide office, refile a bond
2 that satisfies sub. (4m) (b) 1. and resubmit evidence that satisfies sub. (4m) (b) 2.

3 **SECTION 30.** 224.72 (8) of the statutes is repealed and recreated to read:

4 224.72 (8) REGISTRATION PERIOD; FEES. The division shall promulgate rules
5 establishing the registration period and the registration fees for loan originators,
6 mortgage bankers and mortgage brokers.

7 **SECTION 31.** 224.73 of the statutes is amended to read:

8 **224.73** (title) **Relationship between loan originator and either a**
9 **mortgage banker or a mortgage broker.** (1) RESPONSIBILITY FOR LOAN
10 ORIGINATOR. A mortgage banker or a mortgage broker is responsible for, and shall
11 supervise the acts of, a loan originator who registers under s. 224.72 (3) as an
12 employe of the mortgage banker or mortgage broker. A mortgage banker or mortgage
13 broker is also responsible for, and shall supervise the acts of, a loan originator or any
14 other person who otherwise acts on behalf of the mortgage banker or the mortgage
15 broker.

16 (2) RESTRICTION ON LOAN ORIGINATOR. If the ~~department~~ division suspends or
17 revokes a mortgage banker's or a mortgage broker's certificate of registration, a loan
18 originator may not act on behalf of that mortgage banker or mortgage broker during
19 the period of suspension or revocation.

20 (3) TRANSFER BY LOAN ORIGINATOR. A registered loan originator may at any time
21 apply, on forms prescribed and provided by the ~~department~~ division, to transfer
22 employment to another registered mortgage banker or mortgage broker. The fee for
23 ~~transfer is specified under s. 224.72 (8) (d) and is payable when the loan originator~~
24 ~~files the application~~ division shall promulgate rules establishing a fee for a transfer
25 application under this subsection.

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1 **SECTION 32.** 224.74 (title) of the statutes is amended to read:

2 **224.74 (title) Department's Division's review of the operations of a loan**
3 **solicitor, loan originator, mortgage broker or mortgage banker.**

4 **SECTION 33.** 224.74 (1) of the statutes is repealed and recreated to read:

5 224.74 (1) ANNUAL REPORTS; AUDITS. (a) *Annual report.* Except as provided in
6 par. (b), each year, on a date specified by the division and in a form required by the
7 division, a mortgage banker or mortgage broker shall submit to the division an
8 annual report relating to the mortgage banker's or mortgage broker's operations
9 during its most recently completed fiscal year.

10 (b) *Audit requirement.* Each year, no later than 6 months following the end of
11 its most recently completed fiscal year, a mortgage banker or mortgage broker that
12 qualified for registration under s. 224.72 (4) (a) 4. or (d) or (4m) (a) 3. or (b), shall
13 submit a copy of an audit of the mortgage banker's or mortgage broker's operations
14 during that fiscal year. An audit under this paragraph shall be conducted by an
15 independent certified public accountant in accordance with generally accepted
16 auditing standards. The financial statements in the audit report shall be prepared
17 in accordance with generally accepted accounting principles.

18 (c) *Audits requested by the division.* The division may request that a mortgage
19 banker or mortgage broker obtain an audit of the mortgage banker's or mortgage
20 broker's operations if the division has reason to believe that the mortgage banker or
21 mortgage broker may not have sufficient financial resources to meet its obligations
22 to its clients or investors or to other persons directly affected by the activities
23 conducted by the mortgage banker or mortgage broker under the certificate of
24 registration granted by the division. If the division requests an audit under this
25 paragraph, the mortgage banker or mortgage broker shall have the audit completed

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1 no later than 90 days after the date of the division's request. The mortgage banker
2 or mortgage broker shall submit the audit report to the division no later than 5 days
3 after the date on which the audit is completed. An audit under this paragraph shall
4 be conducted by an independent certified public accountant in accordance with
5 generally accepted auditing standards. The financial statements in the audit report
6 shall be prepared in accordance with generally accepted accounting principles.

7 **SECTION 34.** 224.74 (2) (a) of the statutes is amended to read:

8 224.74 (2) (a) *Conduct of examination and preparation of report.* The
9 department division may at any time, on its own motion or upon complaint, examine
10 the books of account, records, condition and affairs of a mortgage banker, loan
11 originator or ~~loan solicitor~~ mortgage broker registered under this subchapter. The
12 department division shall prepare a report of each examination conducted under this
13 section. As part of the examination or preparation of the report, the department
14 division may examine under oath any of the members, officers, directors, agents,
15 employes or customers of the mortgage banker, loan originator or ~~loan solicitor~~
16 mortgage broker. The department division may require a mortgage banker, loan
17 originator or ~~loan solicitor~~ mortgage broker who is examined under this paragraph
18 to pay to the department division a reasonable fee for the costs of conducting the
19 examination. ~~If the department requires a fee under this paragraph, the department~~
20 ~~shall establish the amount of the fee by rule.~~

21 **SECTION 35.** 224.74 (2) (b) of the statutes is amended to read:

22 224.74 (2) (b) *Confidentiality.* Examination reports and correspondence
23 regarding the reports are confidential, except that the secretary division may release
24 examination reports and correspondence in connection with a disciplinary

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1 proceeding conducted by the department division, a liquidation proceeding or a
2 criminal investigation or proceeding.

3 **SECTION 36.** 224.75 (title) of the statutes is amended to read:

4 **224.75 (title) Record-keeping requirements for mortgage bankers and**
5 **loan solicitors mortgage brokers.**

6 **SECTION 37.** 224.75 (1) (title) of the statutes is amended to read:

7 224.75 (1) (title) REQUIRED RECORDS; LOAN APPLICATION OR SERVICING DOCUMENTS.

8 **SECTION 38.** 224.75 (1) (a) of the statutes is amended to read:

9 224.75 (1) (a) *Fee record system.* A mortgage banker or ~~loan solicitor~~ mortgage
10 broker shall establish and maintain a record system which shows all fees which a
11 mortgage banker or mortgage broker charged a mortgage loan applicant and or a
12 mortgagor. The record shall show the application or disposition of those fees.

13 **SECTION 39.** 224.75 (1) (b) (intro.) of the statutes is amended to read:

14 224.75 (1) (b) *Loan application record system.* (intro.) A mortgage banker or
15 ~~loan solicitor~~ mortgage broker shall establish and maintain a record system
16 containing all of the following information for each mortgage loan application:

17 **SECTION 40.** 224.75 (1) (c) (intro.) of the statutes is amended to read:

18 224.75 (1) (c) *Loan application documents.* (intro.) A mortgage banker or ~~loan~~
19 ~~solicitor~~ mortgage broker shall maintain for each mortgage loan application all of the
20 following documents, if used by the mortgage banker or ~~loan solicitor~~ mortgage
21 broker in connection with the mortgage loan application file:

22 **SECTION 41.** 224.75 (1) (d) of the statutes is created to read:

23 224.75 (1) (d) *Loan servicing records and documents.* A mortgage banker shall
24 maintain for each mortgage loan serviced by the mortgage banker a copy of or a
25 record of all correspondence relating to the loan.

ASSEMBLY BILL 830**SECTION 42**

1 **SECTION 42.** 224.75 (2) of the statutes is amended to read:

2 224.75 (2) PERIOD OF RECORD RETENTION. A mortgage banker or ~~loan solicitor~~
3 mortgage broker shall keep for at least 25 months copies of all deposit receipts,
4 canceled checks, trust account records, the records which a mortgage banker or ~~loan~~
5 ~~solicitor~~ mortgage broker maintains under sub. (1) (c) or (d) and other relevant
6 documents or correspondence received or prepared by the mortgage banker or ~~loan~~
7 ~~solicitor~~ mortgage broker in connection with a loan or loan application. The retention
8 period begins on the date the loan is closed or, if the loan is not closed, the date of loan
9 application. If the loan is serviced by a mortgage banker, the retention period
10 commences on the date that the loan is paid in full. The mortgage banker or ~~loan~~
11 ~~solicitor~~ mortgage broker shall make the records available for inspection and copying
12 by the department division. If the records are not kept within this state, the
13 mortgage banker or ~~loan solicitor~~ mortgage broker shall, upon request of the
14 department division, promptly send exact and complete copies of requested records
15 to the department division.

16 **SECTION 43.** 224.75 (3) of the statutes is amended to read:

17 224.75 (3) CONTENTS OF CREDIT AND APPRAISAL REPORTS. (a) *Credit report.* If a
18 mortgage banker or ~~loan solicitor~~ mortgage broker charges a loan applicant a
19 separate fee for a credit report, the credit report shall consist, at a minimum, of a
20 written statement indicating the name of the credit reporting agency which
21 investigated the credit history of the applicant.

22 (b) *Appraisal report.* If a mortgage banker or ~~loan solicitor~~ mortgage broker
23 charges a loan applicant a separate fee for an appraisal report, the appraisal report
24 shall consist, at a minimum, of a written statement indicating the appraiser's
25 opinion of the value of the property appraised for mortgage loan purposes, the basis

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1 for that opinion and the name of the person who conducted the appraisal. If
2 requested by a loan applicant, a mortgage banker or mortgage broker shall provide
3 the loan applicant with a copy of any written appraisal report held by the mortgage
4 banker or mortgage broker, if the loan applicant paid a fee for the report and the
5 report relates to residential real estate that the loan applicant owns or has agreed
6 to purchase.

7 **SECTION 44.** 224.75 (4) of the statutes is amended to read:

8 224.75 (4) RESPONSIBILITY FOR FORMS. A mortgage banker or ~~loan solicitor~~
9 mortgage broker is responsible for the preparation and correctness of all entries on
10 forms, documents and records which are under the mortgage banker's or ~~loan~~
11 ~~solicitor's~~ mortgage broker's control and which are not dependent on information
12 provided by the loan applicant or a 3rd party.

13 **SECTION 45.** 224.75 (5) of the statutes is amended to read:

14 224.75 (5) ACCOUNTING PRACTICES. A mortgage banker or ~~loan solicitor~~
15 mortgage broker shall maintain its books and records in accordance with generally
16 accepted accounting principles.

17 **SECTION 46.** 224.76 of the statutes is amended to read:

18 **224.76 (title) Mortgage banker, loan originator and ~~loan solicitor~~**
19 **mortgage broker trust accounts.** A mortgage banker, loan originator or ~~loan~~
20 ~~solicitor~~ mortgage broker shall deposit in one or more trust accounts all funds other
21 than nonrefundable fees which it receives on behalf of any person, pending
22 disbursement of the funds in accordance with instructions from the person on whose
23 behalf the funds are deposited. A mortgage banker or ~~loan solicitor~~ may mortgage
24 broker shall maintain trust accounts in a bank, savings bank, savings and loan
25 association or credit union which is authorized to do business in this state or ~~which~~

ASSEMBLY BILL 830**SECTION 46**

1 ~~is federally chartered~~ whose accounts are insured by the Federal Deposit Insurance
2 Corporation or the National Credit Union Administration. The mortgage banker or
3 ~~loan solicitor~~ mortgage broker shall notify the department division of the location of
4 its trust accounts and ~~shall authorize the department to examine and audit any trust~~
5 ~~account as the department considers it necessary.~~

6 **SECTION 47.** 224.77 (title) of the statutes is amended to read:

7 **224.77 (title) Discipline of mortgage bankers, loan originators and loan**
8 **solicitors mortgage brokers.**

9 **SECTION 48.** 224.77 (1) (intro.) of the statutes is amended to read:

10 224.77 (1) PROHIBITED CONDUCT. (intro.) ~~The department~~ division may deny an
11 application submitted to it under s. 224.72, or may revoke, suspend or limit the
12 certificate of registration of a mortgage banker, loan originator or ~~loan solicitor~~
13 mortgage broker, or may reprimand a mortgage banker, loan originator or ~~loan~~
14 ~~solicitor~~ mortgage broker, if it finds that the mortgage banker, loan originator or ~~loan~~
15 ~~solicitor~~ mortgage broker did any of the following:

16 **SECTION 49.** 224.77 (1) (a) of the statutes is amended to read:

17 224.77 (1) (a) Made a material misstatement in an application for registration,
18 or in information furnished to the department division.

19 **SECTION 50.** 224.77 (1) (e) of the statutes is amended to read:

20 224.77 (1) (e) Acted for more than one party in a transaction without the
21 knowledge and consent of all parties on whose behalf the mortgage banker, loan
22 originator or ~~loan solicitor~~ mortgage broker is acting.

23 **SECTION 51.** 224.77 (1) (f) of the statutes is amended to read:

24 224.77 (1) (f) Accepted a commission, money or other thing of value for
25 performing an act as a loan originator unless the payment is from a mortgage banker

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1 or mortgage broker who is registered under s. 224.72 (3) as employing the loan
2 originator.

3 **SECTION 52.** 224.77 (1) (h) of the statutes is amended to read:

4 224.77 (1) (h) Failed, within a reasonable time, to account for or remit any
5 moneys coming into the mortgage banker's, loan originator's or ~~loan solicitor's~~
6 mortgage broker's possession which belong to another person.

7 **SECTION 53.** 224.77 (1) (i) of the statutes is amended to read:

8 224.77 (1) (i) Demonstrated a lack of competency to act as a mortgage banker,
9 loan originator or ~~loan solicitor~~ mortgage broker in a way which safeguards the
10 interests of the public.

11 **SECTION 54.** 224.77 (1) (k) of the statutes is amended to read:

12 224.77 (1) (k) Violated any provision of this subchapter, ch. 138 or any federal
13 or state statute, rule or regulation which relates to practice as a mortgage banker,
14 loan originator or ~~loan solicitor~~ mortgage broker.

15 **SECTION 55.** 224.77 (1) (L) of the statutes is amended to read:

16 224.77 (1) (L) Engaged in conduct which violates a standard of professional
17 behavior which, through professional experience, has become established for
18 mortgage bankers, loan originators or ~~loan solicitors~~ mortgage brokers.

19 **SECTION 56.** 224.77 (1) (o) of the statutes is amended to read:

20 224.77 (1) (o) In the course of practice as a mortgage banker, loan originator
21 or ~~loan solicitor~~ mortgage broker, except in relation to housing designed to meet the
22 needs of elderly individuals, treated a person unequally solely because of sex, race,
23 color, handicap, sexual orientation, as defined in s. 111.32 (13m), religion, national
24 origin, age or ancestry, the person's lawful source of income, or the sex or marital
25 status of the person maintaining a household.

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1 **SECTION 57.** 224.77 (1) (r) of the statutes is created to read:

2 224.77 (1) (r) Failed to notify the division that the mortgage banker's or
3 mortgage broker's net worth fell below the minimum amount required under s.
4 224.72 (4) (a) 4. or (d) 2. or (4m) (a) 3. or (b) 2., if the mortgage banker or mortgage
5 broker had qualified for registration under s. 224.72 (4) (a) 4. or (d) or (4m) (a) 3. or
6 (b).

7 **SECTION 58.** 224.77 (1m) of the statutes is created to read:

8 224.77 (1m) ADMINISTRATIVE FORFEITURE AND HEARING RIGHTS. (a) The division
9 may assess against a person who is registered under this chapter a forfeiture of not
10 more than \$1,000 for each violation enumerated under sub. (1) (a) to (o) or (r).

11 (b) A person may contest an assessment of forfeiture under par. (a) by sending,
12 within 10 days after receipt of notice of the assessment under par. (a), a written
13 request for hearing under s. 227.44 to the division of hearings and appeals created
14 under s. 15.103 (1). The administrator of the division of hearings and appeals may
15 designate a hearing examiner to preside over the case and recommend a decision to
16 the administrator under s. 227.46. The decision of the administrator of the division
17 of hearings and appeals shall be the final administrative decision. The division of
18 hearings and appeals shall commence the hearing within 30 days after receipt of the
19 request for hearing and shall issue a final decision within 15 days after the close of
20 the hearing. Proceedings before the division of hearings and appeals are governed
21 by ch. 227. In any petition for judicial review of a decision by the division of hearings
22 and appeals, the party, other than the petitioner, who was in the proceeding before
23 the division of hearings and appeals shall be the named respondent.

24 (c) All forfeitures shall be paid to the division of banking within 10 days after
25 receipt of notice of assessment or, if the forfeiture is contested under par. (b), within

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1 10 days after receipt of the final decision after exhaustion of administrative review.
2 The division of banking shall remit all forfeitures paid to the state treasurer for
3 deposit in the school fund.

4 (d) The attorney general may bring an action in the name of the state to collect
5 any forfeiture imposed under this subsection if the forfeiture has not been paid
6 following the exhaustion of all administrative and judicial reviews. The only issue
7 to be contested in any such action shall be whether the forfeiture has been paid.

8 **SECTION 59.** 224.77 (2) of the statutes is amended to read:

9 224.77 (2) CONDUCT OF OFFICERS, DIRECTORS AND OTHERS. The department
10 division may revoke, suspend or limit a certificate of registration issued under this
11 subchapter or reprimand a mortgage banker or ~~loan solicitor~~ mortgage broker
12 registered under this subchapter, if a director, officer, trustee, partner or member of
13 the mortgage banker or ~~loan solicitor~~ mortgage broker or a person who has a
14 financial interest in or is in any way connected with the operation of the mortgage
15 banker's or ~~loan solicitor's~~ mortgage broker's business is guilty of an act or omission
16 which would be cause for refusing to issue a certificate of registration to that
17 individual.

18 **SECTION 60.** 224.77 (3) of the statutes is amended to read:

19 224.77 (3) (title) ORDERS OF THE ~~DEPARTMENT~~ DIVISION. (a) *Orders to prevent or*
20 *correct actions.* The department division may issue general and special orders
21 necessary to prevent or correct actions by a mortgage banker, loan originator or ~~loan~~
22 ~~solicitor~~ mortgage broker that constitute cause under this section for revoking,
23 suspending or limiting a certificate of registration.

24 (b) *Types of special orders.* Special orders may direct a mortgage banker, loan
25 originator or ~~loan solicitor~~ mortgage broker to cease and desist from engaging in a

ASSEMBLY BILL 830**SECTION 60**

1 particular activity or may direct the mortgage banker, loan originator or loan
2 ~~solicitor~~ mortgage broker to refund or remit to a loan applicant or borrower amounts
3 that the mortgage banker, loan originator or ~~loan solicitor~~ mortgage broker got from
4 actions which constitute cause under this section for revoking, suspending or
5 limiting a certificate of registration.

6 (c) *Judicial review.* Orders of the ~~department~~ division are subject to review as
7 provided in ch. 227.

8 **SECTION 61.** 224.77 (3m) of the statutes is created to read:

9 224.77 (3m) HEARING RIGHTS FOR REGISTRATION DENIAL, REVOCATION OR
10 SUSPENSION. A person whose certificate of registration has been denied, revoked or
11 suspended under this section may request a hearing under s. 227.44 within 30 days
12 after the date of denial, revocation or suspension of the certificate of registration.
13 The division may appoint a hearing examiner under s. 227.46 to conduct the hearing.

14 **SECTION 62.** 224.77 (4) of the statutes is amended to read:

15 224.77 (4) PERIOD OF DISCIPLINARY ACTION; INELIGIBILITY FOR REGISTRATION. (a)
16 *Period.* Except as provided in par. (b), the ~~department~~ division shall determine in
17 each case the period that a revocation, suspension or limitation of a certificate of
18 registration is effective.

19 (b) *Ineligibility.* 1. Except as provided in subd. 2., if the ~~department~~ division
20 denies or revokes a certificate of registration under sub. (1), the person is not eligible
21 for a certificate of registration until the expiration of a period ~~which may not exceed~~
22 ~~2 years after the effective date of the revocation~~ determined in each case by the
23 division.

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1 2. If the ~~department~~ division revokes a certificate of registration under sub. (1)
2 (p) or (q), the person is not eligible for a certificate of registration until 5 years after
3 the effective date of the revocation.

4 **SECTION 63.** 224.77 (5) (a) of the statutes is amended to read:

5 224.77 (5) (a) *Mandatory revocation or suspension.* Notwithstanding sub. (1)
6 (intro.) and (4), if the ~~department~~ division finds that a mortgage banker, loan
7 originator or ~~loan solicitor~~ mortgage broker has violated sub. (1) (p) or (q), the
8 ~~department~~ division shall:

9 1. For the first offense, suspend the registration of the mortgage banker, loan
10 originator or ~~loan solicitor~~ mortgage broker for not less than 90 days.

11 2. For the 2nd offense, revoke the registration of the mortgage banker, loan
12 originator or ~~loan solicitor~~ mortgage broker.

13 **SECTION 64.** 224.77 (6) of the statutes is created to read:

14 224.77 (6) VOLUNTARY SURRENDER. A mortgage banker, loan originator or
15 mortgage broker may voluntarily surrender a registration to the division, but the
16 division may refuse to accept the surrender if the division has received allegations
17 of unprofessional conduct against the mortgage banker, loan originator or mortgage
18 broker. The division may negotiate stipulations in consideration for accepting the
19 surrender of registration.

20 **SECTION 65.** 224.78 of the statutes is amended to read:

21 **224.78 Fee splitting.** A mortgage banker, loan originator or ~~loan solicitor~~
22 mortgage broker may not pay a person who is not registered under this subchapter
23 a commission, money or other thing of value for performing an act as a mortgage
24 banker, loan originator or ~~loan solicitor~~ mortgage broker.

25 **SECTION 66.** 224.80 (2) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 830**SECTION 66**

1 224.80 (2) PRIVATE CAUSE OF ACTION. (intro.) A person who is aggrieved by an
2 act which is committed by a mortgage banker, loan originator or ~~loan solicitor~~
3 mortgage broker and which is described in s. 224.77 (1) may recover all of the
4 following in a private action:

5 **SECTION 67.** 224.81 of the statutes is amended to read:

6 **224.81 Limitation on actions for commissions and other**
7 **compensation.** A person who is engaged in the business or acting in the capacity
8 of a mortgage banker, loan originator or ~~loan solicitor~~ mortgage broker in this state
9 may not bring or maintain an action in this state to collect a commission, money or
10 other thing of value for performing an act as a mortgage banker, loan originator or
11 ~~loan solicitor~~ mortgage broker without alleging and proving that the person was
12 registered under this subchapter as a mortgage banker, loan originator or ~~loan~~
13 ~~solicitor~~ mortgage broker when the alleged cause of action arose.

14 **SECTION 68.** 224.82 of the statutes is amended to read:

15 **224.82 Compensation presumed.** In a prosecution arising from a violation
16 of this subchapter, proof that a person acted as a mortgage banker, loan originator
17 or ~~loan solicitor~~ mortgage broker is sufficient, unless rebutted, to establish that
18 compensation was received by, or promised to, that person.

19 **SECTION 69.** 422.501 (2) (b) 8. of the statutes is amended to read:

20 422.501 (2) (b) 8. A person registered as a mortgage banker, loan originator or
21 ~~loan solicitor~~ mortgage broker under s. 224.72 if the person is acting within the
22 course and scope of that registration.

23 **SECTION 70.** 708.10 (1) (c) of the statutes, as affected by 1997 Wisconsin Act 35,
24 is amended to read:

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1 708.10 (1) (c) “Lender” means all lenders identified under s. 706.11 (1), loan
2 solicitors mortgage brokers, as defined under s. 224.71 ~~(2)~~ (4), and savings and loan
3 associations organized under ch. 215, except that “lender” does not include any
4 federal, state or local unit of government or any agency, political subdivision or
5 instrumentality of such a unit of government.

6 **SECTION 71.** 943.62 (2m) of the statutes is amended to read:

7 943.62 (2m) This section does not apply to a savings and loan association,
8 credit union, bank, savings bank, or a mortgage banker, loan originator or loan
9 solicitor mortgage broker registered under s. 224.72.

10 **SECTION 72. Nonstatutory provisions.**

11 (1) EMERGENCY RULE-MAKING AUTHORITY. Using the procedure under section
12 227.24 of the statutes, the division of banking shall promulgate rules required under
13 sections 224.72 (8) and 224.73 (3) of the statutes, as affected by this act, for the period
14 before permanent rules become effective, but not to exceed the period authorized
15 under section s. 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24
16 (1) (a) and (2) (b) of the statutes, the division need not provide evidence of the
17 necessity of preservation of the public peace, health, safety or welfare in
18 promulgating rules under this subsection.

19 **SECTION 73. Initial applicability.**

20 (1) REGISTRATION OF PERSONS WHO ENGAGE IN TABLE FUNDING. The treatment of
21 section 224.71 (2) (with respect to engaging in table funding) and (5) of the statutes
22 first applies to table funding that occurs on the effective date of this subsection.

23 (2) OTHER REGISTRATION PROVISIONS. The treatment of sections 224.70, 224.71
24 (1b), (1c), (1r) (a) and (b), (2) (except with respect to engaging in table funding) and
25 (3) (a) 3. and (b) 6., 224.72 (title), (1m), (2) (intro.) and (b), (3), (4) (intro.), (b), (c) and

ASSEMBLY BILL 830**SECTION 73**

1 (d), (4m), (4n), (4r), (5) (a), (b) 1. and 2., (7), (8), 224.73, 224.74 (title), (1), (2) (a) and
2 (b), 224.75 (title), (1) (title), (a), (b) (intro.), (c) (intro.) and (d), (2), (3), (4) and (5),
3 224.76, 224.77 (title), (1) (intro.), (a), (e), (f), (h), (i), (k), (L), (o) and (r), (1m), (2), (3),
4 (3m), (4), (5) (a) and (6), 224.78, 224.80 (2) (intro.), 224.81, 224.82, 422.501 (2) (b) 8.,
5 708.10 (1) (c) and 943.62 (2m) and subchapter II (title) of chapter 224 of the statutes,
6 the renumbering and amendment of section 224.72 (4) (a) of the statutes and the
7 creation of section 224.72 (4) (a) 1. a. to d. and 3. of the statutes first apply with
8 respect to initial or renewal applications for a registration period after January 1,
9 1999.

10

(END)