



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0637~~2~~ 3  
RJM:kmg:pg

DO: 5-20

Rev MR  
DNR

2003 BILL

1 AN ACT *to renumber* 224.71 (1c) and 224.72 (3); *to amend* 224.71 (3) (b) 2.,  
2 224.71 (4) (b) 2., 224.72 (3) (title), 224.72 (5) (a), 224.72 (7m) (intro.), 224.77 (1m)  
3 (a), 224.80 (1) and 224.80 (2) (a) 1.; and *to create* 224.71 (1d), 224.72 (3) (b),  
4 224.72 (3) (c), 224.72 (7) (d) to (f), 224.72 (7m) (am), 224.72 (7p), 224.755 and  
5 224.79 of the statutes; **relating to:** qualifications of certain agents of mortgage  
6 bankers and mortgage brokers, consumer mortgage brokerage agreements,  
7 granting rule-making authority, and providing a penalty.

Gen. Cat.

***Analysis by the Legislative Reference Bureau***

This bill makes various changes to the laws governing mortgage banking and mortgage brokering. Significant changes include:

***Licensed lenders that engage in mortgage banking or mortgage brokering***

Current law requires mortgage bankers and mortgage brokers to be registered with the Division of Banking (division) in the Department of Financial Institutions (DFI). Generally, a mortgage banker is a person who originates loans that are secured by mortgages (mortgage loans), sells or services mortgage loans, services land contracts, or provides escrow services. A mortgage broker is generally a person who, on behalf of another person and for a commission, finds or negotiates a mortgage loan. Typically, mortgage bankers and mortgage brokers are institutions, not individuals. There are several exemptions from the current definitions of

**BILL**

“mortgage banker” and “mortgage broker,” including certain lending institutions licensed by the division (licensed lenders).

This bill deletes the exemptions for licensed lenders, thereby requiring licensed lenders who engage in mortgage banking or mortgage brokering to be registered as such with the division. The bill requires these licensed lenders to obtain a registration no later than the 60th day after the bill becomes law.

**Competency examinations**

This bill establishes competency examination and continuing education requirements applicable to certain agents, called loan originators, of mortgage bankers and mortgage brokers. Current law does not contain any such requirements. A loan originator is generally a person who finds or negotiates a mortgage loan for or on behalf of a mortgage banker or mortgage broker. With certain exceptions, this bill requires an applicant for registration as a loan originator to pass a written examination covering primary and subordinate mortgage financing transactions and the laws regulating mortgage bankers and mortgage brokers. This requirement must be satisfied as a condition of the division approving an application for registration as a loan originator. In addition, with certain exceptions, the bill requires an applicant for renewal of registration to pass a written examination designed to determine whether the applicant remains competent.

This bill also requires each loan originator, as a condition of renewing a registration, to successfully complete at least 16 hours of education covering primary and subordinate mortgage financing transactions and the laws regulating mortgage bankers and mortgage brokers. ~~These hours of education must be completed during the two years preceding the date of the application for renewal of registration.~~

The division, by rule, must establish the content of the competency examinations and program of continuing education and must establish standards for approving persons who administer the competency examinations or provide continuing education. ~~In addition, the bill phases in the competency examination and continuing education requirements. Under the bill, the competency examination requirements first apply to persons who have applications pending with the division on July 2, 2004. The continuing education requirement first applies to applications for the registration period that begins on July 1, 2006.~~

**Criminal background checks**

The bill requires the employer of each applicant for registration as a loan originator, or for renewal of registration, to obtain a criminal history search from the Department of Justice, showing the applicant’s criminal arrest and conviction record in this state. The employer must submit the results of the search to the division. Under the bill, the division may not issue or renew a registration if the results of the search indicate that the applicant has been convicted of a felony and, as a result of the conviction, represents an unreasonable risk of violating the subchapter of the statutes that generally governs mortgage bankers, mortgage brokers, and loan originators.

**Regulation of consumer brokerage agreements**

Currently, the rules of DFI regulate the content of brokerage agreements. This bill requires every brokerage agreement between a mortgage broker and a consumer

or to pass on examination demonstrating satisfactory knowledge of these subjects

These examination requirements first apply to persons who have applications pending on July 2, 2004.

This requirement first applies to persons who have applications pending on July 1, 2006.

The loan originator review board to follow in

and conduct requirements

The bill creates a loan originator review board for the purpose of approving the program of continuing education and individuals who administer competency examinations.

**BILL**

to be in writing, in the form prescribed by rule of the division, and to contain all information required by rule of the division. Under the bill, the division must promulgate these rules for the purpose of facilitating the comparison of similar charges and total charges assessed by different mortgage brokers. The bill also requires a mortgage broker to give a consumer a disclosure statement which contains a brief explanation of the relationship between the consumer and the mortgage broker under the brokerage agreement and the manner in which the mortgage broker may be compensated, and any additional information required by rule of the division. The mortgage broker must explain the content of the disclosure statement and ensure that the consumer initials or signs the statement, acknowledging that the consumer has read and understands the statement. Under the bill, a consumer generally means an individual who seeks or acquires mortgage brokerage services for personal, family, or household purposes.

***Penalties and limitations on liability***

This bill raises the maximum potential forfeiture (civil penalty) for certain violations of the mortgage banking and mortgage brokering laws from \$1,000 to \$2,000 and increases the maximum potential liability for these violations in certain private causes of action from \$1,000 to \$2,000. The bill also raises the maximum potential fine and imprisonment (criminal penalties) for violating a registration requirement under the mortgage banking and mortgage brokering laws from \$1,000 and six months to \$2,000 and nine months.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

- 1** SECTION 1. 224.71 (1c) of the statutes is renumbered 224.71 (1e).
- 2** SECTION 2. 224.71 (1d) of the statutes is created to read:
- 3** 224.71 (1d) "Consumer" means a person other than an organization, as defined
- 4** in s. 421.301 (28), who seeks or acquires mortgage brokerage services for personal,
- 5** family, or household purposes.
- 6** SECTION 3. 224.71 (3) (b) 2. of the statutes is amended to read:

Insert  
1-1

**BILL**

1           224.71 (3) (b) 2. A credit union which negotiates loans ~~or any licensee under~~  
2 ~~ch. 138 which negotiates loans~~ or any licensed attorney who, incidental to the general  
3 practice of law, negotiates or offers or attempts to negotiate a loan.

4           **SECTION 4.** 224.71 (4) (b) 2. of the statutes is amended to read:

5           224.71 (4) (b) 2. A credit union which negotiates loans ~~or any licensee under~~  
6 ~~ch. 138 which negotiates loans~~ or any licensed attorney who, incidental to the general  
7 practice of law, negotiates or offers or attempts to negotiate a loan.

8           **SECTION 5.** 224.72 (3) (title) of the statutes is amended to read:

9           224.72 (3) (title) ~~ADDITIONAL REQUIREMENT~~ REQUIREMENTS FOR LOAN ORIGINATOR  
10 APPLICANT.

11           **SECTION 6.** 224.72 (3) of the statutes is renumbered 224.72 (3) (a).

12           **SECTION 7.** 224.72 (3) (b) of the statutes is created to read:

13           224.72 (3) (b) In addition to the requirements of sub. (2), each applicant for  
14 registration as a loan originator, other than an applicant employed by a subsidiary  
15 of a credit union or of an entity described under s. 224.71 (3) (b) 1., shall pass a written  
16 examination covering primary and subordinate mortgage financing transactions  
17 and the provisions of this subchapter. The examination shall be administered by ~~the~~  
18 <sup>(a)</sup> ~~division's~~ <sup>of the loan originator review board</sup> designee and shall comply with the applicable rules promulgated under  
19 sub. (7p).

20           **SECTION 8.** 224.72 (3) (c) of the statutes is created to read:

21           224.72 (3) (c) The employer of each applicant for registration as a loan  
22 originator shall obtain a criminal history search relating to the applicant from the  
23 records maintained by the department of justice and submit the results of the search  
24 to the division.

25           **SECTION 9.** 224.72 (5) (a) of the statutes is amended to read:

**BILL**

1           224.72 (5) (a) *Loan originator*. Except as provided in sub. (7m), upon receiving  
2 a properly completed application for registration as a loan originator and the fee  
3 specified in rules promulgated under sub. (8) and upon an applicant's compliance  
4 with sub. (3) (a) and, if required, sub. (3) (b), the division may issue to the applicant  
5 a certificate of registration as a loan originator.

6           **SECTION 10.** 224.72 (7) (d) to (f) of the statutes are created to read:

7           224.72 (7) (d) An applicant for renewal of a certificate of registration as a loan  
8 originator, other than an applicant employed by a subsidiary of a credit union or of  
9 an entity described under s. 224.71 (3) (b) 1., shall, as part of the application, pass  
10 a written examination designed to determine whether the applicant remains  
11 competent in primary and subordinate mortgage financing transactions and the  
12 provisions of this subchapter. The examination shall be administered by the  
13 ~~division's~~ <sup>of the loan originator review board</sup> designee and shall comply with the applicable rules promulgated under  
14 sub. (7p).

15           (e) <sup>1.</sup> An applicant for renewal of a certificate of registration as a loan originator  
16 shall, as part of the application, ~~do the following:~~ <sup>Except as provided in subd. 2.)</sup>

17           ~~1.~~ Submit evidence that is satisfactory to the division that, during the 2 years  
18 preceding the date of application, the applicant has successfully completed at least  
19 16 hours of education covering primary and subordinate mortgage financing  
20 transactions and the provisions of this subchapter, consistent with rules  
21 promulgated by the division under sub. (7p).

22           2. Satisfy the competency examination requirements under sub. (3) (b).

23           (f) The employer of each applicant for renewal of a certificate of registration as  
24 a loan originator shall obtain a criminal history search relating to the applicant from

✓  
Insert  
5-21

**BILL**

1 the records maintained by the department of justice and submit the results of the  
2 search to the division.

3 **SECTION 11.** 224.72 (7m) (intro.) of the statutes is amended to read:

4 **224.72 (7m) DENIAL OF APPLICATION FOR ISSUANCE OR RENEWAL OF REGISTRATION.**  
5 (intro.) The department division may not issue or renew a certificate of registration  
6 under this section if any of the following applies:

7 **SECTION 12.** 224.72 (7m) (am) of the statutes is created to read:

8 **224.72 (7m) (am)** The information provided to the division under sub. (3) (c)  
9 or (7) (f) indicates that the applicant has been convicted of a felony and, as a result  
10 of the conviction, the applicant represents an unreasonable risk of violating this  
11 subchapter, in the opinion of the division.

12 **SECTION 13.** 224.72 (7p) of the statutes is created to read:

13 **224.72 (7p) RULES FOR COMPETENCY EXAMINATION AND CONTINUING EDUCATION**  
14 **REQUIREMENTS.** The division shall promulgate rules establishing requirements for all  
15 of the following:

16 (a) The content of examinations in the law of mortgage banking and mortgage  
17 brokering under sub. (3) (b) and the curricula of education under sub. (7) (e). <sup>1</sup>

18 (b) ~~the~~ <sup>A</sup> approval of any persons who administer examinations under sub. (3)

19 (b) or provide education under sub. (7) (e). <sup>1</sup>

20 **SECTION 14.** 224.755 of the statutes is created to read:

21 **224.755 Continuing education records.** A loan originator shall keep  
22 records documenting compliance with s. 224.72 (7) (e) for at least 4 years.

23 **SECTION 15.** 224.77 (1m) (a) of the statutes is amended to read:

**BILL**

1           224.77 (1m) (a) The division may assess against a person who is registered  
2 under this chapter a forfeiture of not more than ~~\$1,000~~ \$2,000 for each violation  
3 enumerated under sub. (1) (a) to (o) or (r).

4           **SECTION 16.** 224.79 of the statutes is created to read:

5           **224.79 Consumer mortgage brokerage agreements and consumer**  
6 **disclosures. (1) FORM AND CONTENT OF CONSUMER MORTGAGE BROKERAGE AGREEMENTS.**  
7 Every contract between a mortgage broker and a consumer under which the  
8 mortgage broker agrees to provide brokerage services to the consumer shall be in  
9 writing, in the form prescribed by rule of the division, and shall contain all  
10 information required by rule of the division. The division shall promulgate rules to  
11 administer this subsection. The division shall design these rules to facilitate the  
12 comparison of similar charges and total charges assessed by different mortgage  
13 brokers.

14           **(2) CONSUMER DISCLOSURE STATEMENT.** Before entering into a contract with a  
15 consumer to provide brokerage services, a mortgage broker shall give the consumer  
16 a copy of a consumer disclosure statement, explain the content of the statement, and  
17 ensure that the consumer initials or signs the statement, acknowledging that the  
18 consumer has read and understands the statement. The consumer disclosure  
19 statement shall contain a brief explanation of the relationship between the consumer  
20 and the mortgage broker under the proposed contract, a brief explanation of the  
21 manner in which the mortgage broker may be compensated under the proposed  
22 contract, and any additional information required by rule of the division. The  
23 division shall promulgate rules to administer this subsection and, by rule, shall  
24 specify the form and content of the consumer disclosure statement required under  
25 this subsection.

**BILL**

1           **SECTION 17.** 224.80 (1) of the statutes is amended to read:

2           224.80 (1) **PENALTIES.** A person who violates s. 224.72 (1m) may be fined not  
3 more than ~~\$1,000~~ \$2,000 or imprisoned for not more than ~~6~~ 9 months or both. The  
4 district attorney of the county where the violation occurs shall enforce the penalty  
5 under this subsection on behalf of the state.

6           **SECTION 18.** 224.80 (2) (a) 1. of the statutes is amended to read:

7           224.80 (2) (a) 1. Twice the amount of the cost of loan origination connected with  
8 the transaction, except that the liability under this subdivision may not be less than  
9 \$100 nor greater than ~~\$1,000~~ \$2,000 for each violation.

10           **SECTION 19. Nonstatutory provisions.**

11           (1) **REGISTRATION OF FORMERLY EXEMPT PERSONS.** Notwithstanding section 224.72  
12 (1m) of the statutes, any licensee under chapter 138 of the statutes that satisfies the  
13 definition of “mortgage banker” or “mortgage broker” under section 224.71 (3) or (4)  
14 of the statutes, as affected by this act, shall apply for a certificate of registration  
15 under section 224.72 of the statutes, as affected by this act, no later than the 60th  
16 day following the effective date of this subsection.

17           (2) **POSITION INCREASE.** The authorized FTE positions for the department of  
18 financial institutions are increased by 2.0 PR positions, to be funded from the  
19 appropriation under section 20.144 (1) (g) of the statutes, for the purpose of  
administering section 224.72 of the statutes, as affected by this act.

21           **SECTION 20. Initial applicability.**

22           (1) **COMPETENCY EXAMINATION.** The treatment of section 224.72 (3) (b) and (7)  
23 (e) 2. <sup>2</sup> <sup>(d)</sup> of the statutes first applies to applications for a certificate of registration as a  
24 loan originator <sup>or renewal of such a certificate,</sup> that are pending with the division of banking on July 2, 2004.



2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0637/3ins  
RJM:.....

INSERT 1-1 ✓

SECTION 1. 15.07 (1) (a) 7. of the statutes is created to read:

15.07 (1) (a) 7. Members of the loan originator review board under s. 15.185 (5) shall be appointed by the governor without senate confirmation.

SECTION 2. 15.185 (5) of the statutes is created to read:

15.185 (5) LOAN ORIGINATOR REVIEW BOARD. There is created in the department of financial institutions a loan originator review board. The board shall consist of ~~the~~ *the*

*Following* members, appointed for 4-year terms, ~~as follows~~:

- (a) Two ~~members~~ <sup>persons who are</sup> shall be loan originators registered under s. 224.72 (1m).
- (b) One ~~member~~ <sup>person</sup> shall be an agent of a mortgage broker registered under s. 224.72 (1m). *who is*
- (c) One ~~member~~ <sup>person</sup> shall be an agent of a mortgage banker registered under s. 224.72 (1m). *who is*
- (d) One ~~member~~ <sup>person</sup> shall be an individual who provides education under s. 224.72 (7) (e) 1. *who is*
- (e) One ~~member~~ <sup>person</sup> shall be the secretary of financial institutions or his or her designee. *person*

INSERT 5-21 ✓

2. Not later than June 30 ~~of each year~~ *annually*, the designee of the loan originator review board shall conduct an examination on the educational subjects required under subd.

1. Any applicant who, as part of the application, submits evidence that is satisfactory to the division that the applicant has passed the examination under this subdivision

during the year in which the application is made is not required to comply with subd.

1.

INSERT 8-20 ✓

(3) LOAN ORIGINATOR REVIEW BOARD; INITIAL TERMS. Notwithstanding the length of terms specified for members of the loan originator review board under section 15.185 (5) (intro.) ✓ of the statutes, as created by this act, the initial members shall be appointed for the following terms:

(a) The members specified under section 15.185 (5) (a) ✓ and (b) ✓ of the statutes, as created by this act, for terms expiring on May 1, 2005.

(b) The members specified under section 15.185 (5) (c) ✓ and (d) ✓ of the statutes, as created by this act, for terms expiring on May 1, 2007.

*non stat.*

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0637/3dn

RJM:1/1...  
*King*

Representative Jeskewitz:

Among other things, the attached draft creates a loan originator review board for the purpose of approving continuing education providers and persons who administer competency examinations for loan originators. Please note the following issues, as you review the draft:

1. As instructed, the board has 6 members. To avoid tie votes, it is usually recommended that boards have an odd number of members. If you would like to have an odd number of members, please let me know what type of member you would like to add or which member you would like to delete.
2. Rather than have the secretary of ~~the~~ *financial institutions* appoint the board, this draft has the governor appoint the board without senate confirmation. Please let me know if this treatment is not consistent with your intent.
3. Board members are appointed for staggered 4-year terms. Please let me know if this treatment is not consistent with your intent.

Feel free to contact me if you have any questions or desire any changes to the draft.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: robert.marchant@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0637/3dn  
RJM:kmg:cph

May 22, 2003

Representative Jeskewitz:

Among other things, the attached draft creates a loan originator review board for the purpose of approving continuing education providers and persons who administer competency examinations for loan originators. Please note the following issues, as you review the draft:

1. As instructed, the board has 6 members. To avoid tie votes, it is usually recommended that boards have an odd number of members. If you would like to have an odd number of members, please let me know what type of member you would like to add or which member you would like to delete.
2. Rather than have the secretary of financial institutions appoint the board, this draft has the governor appoint the board without senate confirmation. Please let me know if this treatment is not consistent with your intent.
3. Board members are appointed for staggered 4-year terms. Please let me know if this treatment is not consistent with your intent.

Feel free to contact me if you have any questions or desire any changes to the draft.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: robert.marchant@legis.state.wi.us

**Marchant, Robert**

---

**From:** Bilot, Erin  
**Sent:** Tuesday, June 24, 2003 11:40 AM  
**To:** Marchant, Robert  
**Subject:** 0763/3 - Mortgage Broker Bill



Final changes to  
2003 Bill.doc...

Rob,  
Here are the final changes to the mortgage broker bill. Peggy Partenfelder-Moede lobbies for them and she told the group that it's not possible to do anything more than a /4, so this will be the last revision.  
Thanks for everything - I hope you're getting some sort of a break after your budget craziness!  
Erin

Erin Bilot  
Office of Suzanne Jeskewitz  
State Representative  
24th Assembly District

*Part Essie  
608-334-6661*

TO: State Representative Sue Jeskewitz  
FROM: Peggy Partenfelder-Moede  
DATE: June 4, 2003  
RE: LRB-0637/3

The Wisconsin Association of Mortgage Broker's have reviewed the draft and contained in this memo are our final changes to the bill. We also need to have some items clarified within the draft. Many thanks to you, Erin in your office and drafting attorney Rob Marchant who have labored through this process, all to ensure that the draft is just right.

Requested Changes and questions:

✓ Page 3, Line 2: Change review board to Advisory Council found under 15.09 of the statutes; however, the only change we want from the statute definition is that these members shall not get reimbursed for their expenses and they shall be appointed by the Department of Financial Institutions Secretary. Please change throughout entire bill.

✓ Page 4, Line 3: Please insert that the following members, appointed by the DFI Secretary for a 4-year term.

✓ Page 4, Line 4, (a): Change two persons who are loan originators to three. This will give the advisory board 7 members and therefore an odd number to prevent ties.

✓ Page 4, Line 9 (d): Change from an educator to a public member

9 ✓ Page 4, Line 18: Remove credit union which negotiates a loan, Credit Unions should be exempted, not their subsidiaries that employ individually licensed loan originators.

7 Page 4, Line 19-20 and 22-23: Need a clarification regarding the licensed attorney who negotiates a loan. Our intent is to not have any attorney who negotiates a loan be subject to the education requirements for licensed loan originators.

✓ Page 5, Line 5-6-7, 224.72 (3) (b): please remove the subsidiary exemption. All individually licensed loan originators shall be subject to continuing education requirements found within this bill, regardless of whether their company is a subsidiary of a Bank or a Credit Union.

✓ Page 5, Line 9-11: Please insert that, the examination shall be approved by the advisory council and administered by a WI Technical College or a professional trade association whose membership includes loan originators.

✓ Page 5, Line 13 and Page 6, Line 20 (f): It should read as a one time criminal background check and not every licensee period, which would be far too onerous for the employer. However, if the loan originator moves from one company to another company, the new employer would be required to run a criminal background check on the new employee at the time of their license renewal.

✓ Page 5, Line 25-Page 6 Line 1: Remove the subsidiary exemption for the on-going competency exams

✓ Page 6, Line 4-5: Designee? Is that referring to an approved educator on behalf of the advisory council?

✓ Page 7, Line 10-16 224.72 (7p): Add that the division shall promulgate rules establishing requirements for all of the following as recommended by the Advisory Council..

✓ Regarding the competency exams, it is our intent to give the loan originator a choice in each biennium: pass the competency exam or pass appropriate test(s) that are an integral part of the continuing education programming (i.e. if there are four courses that make up the 16 hours, each course has a test at the end of the course). Please keep in mind that it is crucial that we keep the test out provision included within the bill in regards to the continuing education requirements, so that all loan originators are given the choice.

✓ Page 7, Line 18-19: We feel that the educational institution or a non for profit trade association should also keep the records documenting compliance for at least 4 years.

✓ Page 8, Line 5-9: Change that the division shall contain all information..shall promulgate rules to administer this subsection....shall design these rules as recommended by the Advisory Council.

✓ Page 8, Line 18: change to required by the rule of the division as recommended by the advisory council.

✓ Page 9, Line 14-17: Why the authorized FTE position for the division to increase 2.) PR positions?

Again, thank you for your time and commitment to this bill. If you have any questions, please feel to contact me at 608-256-7701.

Thank you.

## Marchant, Robert

---

**From:** Bilot, Erin  
**Sent:** Tuesday, June 24, 2003 3:22 PM  
**To:** Marchant, Robert  
**Subject:** FW: 0763/3 - Mortgage Broker Bill

Rob,  
We are comfortable with what Peggy Partenfelder-Moede wants done, so if it's easier, you can work with her directly and it will be ok with us. Or else I will forward the e-mails. Whatever's easier for you.  
Thanks again,  
Erin

-----Original Message-----

**From:** Peggy Partenfelder-Moede [mailto:peggyym@patrickessie.com]  
**Sent:** Tuesday, June 24, 2003 3:10 PM  
**To:** Bilot, Erin  
**Subject:** RE: 0763/3 - Mortgage Broker Bill

Erin,

Here are my answers, please send to Rob, I did not see his e-mail listed.

- A. As far as credit unions are concerned, we do not want to include CU's because they do not have individually licensed loan originators working for them. However, any company, even if it is a subsidiary of a CU, which employees individually licensed loan originators would be subject to this law. Basically, we want all LO's in the state to have to comply.
- B. If the attorney is a licensed LO then they need to comply regardless of whether they are licensed to practice. But, an attorney who is acting as mortgage broker/banker but is not a licensed loan originator would not have to comply. Again, we do not want to expand this beyond in individually licensed loan originators.
- C. Yes
- D. We do not think it is necessary to have an inclusion of the position increase.

One last thing, I just want to make sure that all finance companies are exempt from this bill?  
Thank you.

I have some questions regarding the instructions.

- A. Page 4, line 18 (credit union exemption). Do you intend to delete the mention of credit unions in s. 224.71 (3) (b) 2., stats., and, instead, add credit unions to the list under s. 224.71 (3) (b) 1., stats.? I assume you want to make the same changes with regard to s. 224.71 (4) (b) 1. and 2., stats.
- B. Page 4, lines 19 to 23 (licensed attorney exemption). Do you intend to exempt any person who has graduated from law school, regardless of whether they are licensed to practice law?
- C. I assume you want to require a technical college or professional association to administer the renewal exam in addition to the exam for issuance of an original license.
- D. The instructions question the inclusion of the position increase. That question seems more appropriately directed to you.  
Please let me know how you'd like to proceed.

Rob

-----Original Message-----

**From:** Bilot, Erin  
**Sent:** Tuesday, June 24, 2003 11:40 AM  
**To:** Marchant, Robert  
**Subject:** 0763/3 - Mortgage Broker Bill

<< File: Final changes to 2003 Bill.doc >>

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anything more than a /4, so this will be the last revision.  
Thanks for everything - I hope you're getting some sort of a break after your budget craziness!

Erin

Erin Bilot

Office of Suzanne Jeskewitz

State Representative

24th Assembly District



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0637/3 4  
RJM:kmg:cph

IN 16-25

RMW

2003 BILL

Gen. Cat.

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***Analysis by the Legislative Reference Bureau***

This bill makes various changes to the laws governing mortgage banking and mortgage brokering. Significant changes include:

***Licensed lenders that engage in mortgage banking or mortgage brokering***

Current law requires mortgage bankers and mortgage brokers to be registered with the Division of Banking (division) in the Department of Financial Institutions (DFI). Generally, a mortgage banker is a person who originates loans that are secured by mortgages (mortgage loans), sells or services mortgage loans, services land contracts, or provides escrow services. A mortgage broker is generally a person who, on behalf of another person and for a commission, finds or negotiates a

**BILL**

mortgage loan. Typically, mortgage bankers and mortgage brokers are institutions, not individuals. There are several exemptions from the current definitions of "mortgage banker" and "mortgage broker," including certain lending institutions licensed by the division (licensed lenders).

This bill deletes the exemptions for licensed lenders, thereby requiring licensed lenders who engage in mortgage banking or mortgage brokering to be registered as such with the division. The bill requires these licensed lenders to obtain a registration no later than the 60th day after the bill becomes law.

**Competency examinations**

This bill establishes competency examination and continuing education requirements applicable to certain agents, called loan originators, of mortgage bankers and mortgage brokers. Current law does not contain any such requirements. A loan originator is generally a person who finds or negotiates a mortgage loan for or on behalf of a mortgage banker or mortgage broker. With certain exceptions, this bill requires an applicant for registration as a loan originator to pass a written examination covering primary and subordinate mortgage financing transactions and the laws regulating mortgage bankers and mortgage brokers. This requirement must be satisfied as a condition of the division approving an application for registration as a loan originator. ~~In addition, with certain exceptions, the bill requires an applicant for renewal of registration to pass a written examination designed to determine whether the applicant remains competent. These examination requirements first apply to persons who have applications pending on July 2, 2004.~~

*of banks (checked)*

*This*

~~This bill also requires each loan originator, as a condition of renewing a registration, to successfully complete at least 16 hours of education covering primary and subordinate mortgage financing transactions and the laws regulating mortgage bankers and mortgage brokers or to pass an examination demonstrating satisfactory knowledge of these subjects. This requirement first applies to persons who have applications pending on July 1, 2006.~~

*applies*

*of series of examinations*

*The*

~~The bill creates a loan originator review board for the purpose of approving the program of continuing education and individuals who administer competency examinations. The division, by rule, must establish the content of the competency examinations and program of continuing education and must establish standards for the loan originator review board to follow in approving persons who administer the competency examinations or provide continuing education.~~

*content*

*the content of the*

*Council*

**Criminal background checks**

The bill requires the employer of each applicant for registration as a loan originator, or for renewal of registration, to obtain a criminal history search from the Department of Justice, showing the applicant's criminal arrest and conviction record in this state. The employer must submit the results of the search to the division. Under the bill, the division may not issue or renew a registration if the results of the search indicate that the applicant has been convicted of a felony and, as a result of the conviction, represents an unreasonable risk of violating the subchapter of the statutes that generally governs mortgage bankers, mortgage brokers, and loan originators.

*the program of and the content of the competency examination*

*in certain cases*

**BILL**

**Regulation of consumer brokerage agreements**

Currently, the rules of DFI regulate the content of brokerage agreements. This bill requires every brokerage agreement between a mortgage broker and a consumer to be in writing, in the form prescribed by rule of the division, and to contain all information required by rule of the division. Under the bill, the division must promulgate these rules for the purpose of facilitating the comparison of similar charges and total charges assessed by different mortgage brokers. The bill also requires a mortgage broker to give a consumer a disclosure statement which contains a brief explanation of the relationship between the consumer and the mortgage broker under the brokerage agreement and the manner in which the mortgage broker may be compensated, and any additional information required by rule of the division. The mortgage broker must explain the content of the disclosure statement and ensure that the consumer initials or signs the statement, acknowledging that the consumer has read and understands the statement. Under the bill, a consumer generally means an individual who seeks or acquires mortgage brokerage services for personal, family, or household purposes.

required

under

The rules required under these provisions must be promulgated in consultation with the loan originator review council.

**Penalties and limitations on liability**

This bill raises the maximum potential forfeiture (civil penalty) for certain violations of the mortgage banking and mortgage brokering laws from \$1,000 to \$2,000 and increases the maximum potential liability for these violations in certain private causes of action from \$1,000 to \$2,000. The bill also raises the maximum potential fine and imprisonment (criminal penalties) for violating a registration requirement under the mortgage banking and mortgage brokering laws from \$1,000 and six months to \$2,000 and nine months.

originator

provisions

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

IN SENATE  
3-3  
1  
2  
3  
4

**SECTION 1.** 15.07 (1) (a) 7. of the statutes is created to read:  
15.07 (1) (a) 7. Members of the loan originator review board under s. 15.185 (5) shall be appointed by the governor without senate confirmation.

**SECTION 2.** 15.185 (5) of the statutes is created to read: (187)

15.187

**BILL**

(187) (B) Same; Councils. (1) ~~ADULT~~ COUNCIL

1 15.185(5) ~~LOAN ORIGINATOR REVIEW BOARD~~ There is created in the department  
2 of financial institutions a loan originator review board. The board shall consist of the  
3 following members, appointed for 4-year terms: by the secretary of financial institutions

- 4 (a) ~~Two~~ Three persons who are loan originators registered under s. 224.72 (1m).
- 5 (b) One person who is an agent of a mortgage broker registered under s. 224.72
- 6 (1m).
- 7 (c) One person who is an agent of a mortgage banker registered under s. 224.72
- 8 (1m).
- 9 (d) One person who is an individual who provides education under s. 224.72 (v)
- 10 ~~(e)~~ represents the public interest
- 11 (e) The secretary of financial institutions or his or her designee.

12 SECTION 3. 224.71 (1c) of the statutes is renumbered 224.71 (1e).

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

14 224.71 (1d) "Consumer" means a person other than an organization, as defined  
15 in s. 421.301 (28), who seeks or acquires mortgage brokerage services for personal,  
16 family, or household purposes.

17 SECTION 5. 224.71 (3) (b) 2. of the statutes is amended to read:

18 224.71 (3) (b) 2. A credit union which negotiates loans or any licensee under  
19 eh. 138 which negotiates loans or any licensed attorney who, incidental to the general  
20 practice of law, negotiates or offers or attempts to negotiate a loan.

21 SECTION 6. 224.71 (4) (b) 2. of the statutes is amended to read:

22 224.71 (4) (b) 2. A credit union which negotiates loans or any licensee under  
23 eh. 138 which negotiates loans or any licensed attorney who, incidental to the general  
24 practice of law, negotiates or offers or attempts to negotiate a loan.

25 SECTION 7. 224.72 (3) (title) of the statutes is amended to read:

**BILL**

1           224.72 (3) (title) ~~ADDITIONAL REQUIREMENT~~ REQUIREMENTS FOR LOAN ORIGINATOR  
2 APPLICANT.

3           **SECTION 8.** 224.72 (3) of the statutes is renumbered 224.72 (3) (a).

4           **SECTION 9.** 224.72 (3) (b) of the statutes is created to read:

5           224.72 (3) (b) In addition to the requirements of sub. (2), each applicant for  
6 registration as a loan originator, ~~other than an applicant employed by a subsidiary~~  
7 ~~of a credit union or of an entity described under s. 224.72 (3) (b) (2),~~ shall pass a written  
8 examination <sup>(approved by the loan originator council)</sup> covering primary and subordinate mortgage financing transactions  
9 and the provisions of this subchapter. The examination shall be administered by a  
10 ~~designee of the loan originator review board and shall comply with the applicable~~  
11 ~~rules promulgated under sub. (7p).~~ *the technical college system board or a professional trade association whose members include loan originators.*

12           **SECTION 10.** 224.72 (3) (c) of the statutes is created to read:

13           224.72 (3) (c) The employer of each applicant for registration as a loan  
14 originator shall obtain a criminal history search relating to the applicant from the  
15 records maintained by the department of justice and submit the results of the search  
16 to the division.

17           **SECTION 11.** 224.72 (5) (a) of the statutes is amended to read:

18           224.72 (5) (a) *Loan originator.* Except as provided in sub. (7m), upon receiving  
19 a properly completed application for registration as a loan originator and the fee  
20 specified in rules promulgated under sub. (8) and upon an applicant's compliance  
21 with sub. (3) (a) and, if required, sub. (3) (b), the division may issue to the applicant  
22 a certificate of registration as a loan originator. *and (e)*

23           **SECTION 12.** 224.72 (7) (d) <sup>3</sup> ~~to (f)~~ of the statutes are created to read:

24           224.72 (7) (d) ~~An applicant for renewal of a certificate of registration as a loan~~  
25 ~~originator, other than an applicant employed by a subsidiary of a credit union or of~~

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1 ~~an entity described under s. 224.71 (3) (b) shall, as part of the application, pass~~  
 2 ~~a written examination designed to determine whether the applicant remains~~  
 3 ~~competent in primary and subordinate mortgage financing transactions and the~~  
 4 ~~provisions of this subchapter. The examination shall be administered by the~~  
 5 ~~designee of the loan originator review board and shall comply with the applicable~~  
 6 ~~rules promulgated under sub. (7p).~~

*technical college system board or a professional trade association whose members include loan originators. The examination*

7 (e) 1. Except as provided in subd. 2., an applicant for renewal of a certificate  
 8 of registration as a loan originator shall, as part of the application, submit evidence  
 9 that is satisfactory to the division that, during the 2 years preceding the date of  
 10 application, the applicant has successfully completed at least 16 hours of education  
 11 covering primary and subordinate mortgage financing transactions and the  
 12 provisions of this subchapter, ~~consistent with rules promulgated by the division~~  
 13 ~~under sub. (7p).~~

*technical college system board or a professional trade association whose members include loan originators*

14 2. Not later than June 30 annually, the ~~designee of the loan originator review~~  
 15 ~~board shall conduct an examination on the educational subjects required under subd.~~  
 16 ~~board shall conduct an examination on the educational subjects required under subd.~~

*or series of examinations, approved by the loan originator industry council, administers*

17 1. Any applicant who, as part of the application, submits evidence that is satisfactory  
 18 to the division that the applicant has passed the examination *or series of examinations*  
 19 during the ~~year in which the application is made~~ *(2 years) preceding the date of* is not required to comply with subd.

*immediately*

20 1. (e)  
 21 (f) ~~The employer of each applicant for renewal of a certificate of registration as~~  
 22 ~~a loan originator shall obtain a criminal history search relating to the applicant from~~  
 23 ~~the records maintained by the department of justice and submit the results of the~~  
 24 ~~search to the division.~~

*If an last has changed employers since his or her criminal history was searched under this paragraph or sub. (3)(c), the applicant's current employer*

SECTION 13. 224.72 (7m) (intro.) of the statutes is amended to read:

**BILL**

1           224.72 (7m) DENIAL OF APPLICATION FOR ISSUANCE OR RENEWAL OF REGISTRATION.  
2 (intro.) The department division may not issue or renew a certificate of registration  
3 under this section if any of the following applies:

4           **SECTION 14.** 224.72 (7m) (am) of the statutes is created to read:

5           224.72 (7m) (am) The information provided to the division under sub. (3) (c)  
6 or (7) <sup>(e) ✓</sup> indicates that the applicant has been convicted of a felony and, as a result  
7 of the conviction, the applicant represents an unreasonable risk of violating this  
8 subchapter, in the opinion of the division.

9           **SECTION 15.** 224.72 (7p) of the statutes is created to read:

10           224.72 (7p) <sup>S</sup> RULES FOR COMPETENCY EXAMINATION AND CONTINUING EDUCATION  
11 REQUIREMENTS. The division shall promulgate rules establishing requirements for all  
12 of the following. <sup>Standards</sup> The approval by the loan originator ~~and~~ council

13 (a) The content of examinations in the law of mortgage banking and mortgage  
14 brokering under sub. (3) (b) <sup>and (7) (e) ✓</sup> and the curricula of education under sub. (7) (e) <sup>(d) ✓</sup>.

15 (b) Approval by the loan originator ~~review board~~ of any persons who administer  
16 examinations under sub. (3) (b) or (7) (e) 2. or provide education under sub. (7) (e) 1. <sup>Advisory Council</sup>

17           **SECTION 16.** 224.755 of the statutes is created to read: <sup>(e) and examination</sup>

18           **224.755 Continuing education records.** A loan originator shall keep  
19 records documenting compliance with s. 224.72 (7) (e) for at least 4 years.

20           **SECTION 17.** 224.77 (1m) (a) of the statutes is amended to read:

21           224.77 (1m) (a) The division may assess against a person who is registered  
22 under this chapter a forfeiture of not more than \$1,000 \$2,000 for each violation  
23 enumerated under sub. (1) (a) to (o) or (r).

24           **SECTION 18.** 224.79 of the statutes is created to read:

maintain

The technical college system board and any professional trade association that administers examinations or provides education under s. 224.72 (7) (e) shall maintain records documenting attendance and examination performance for at least 4 years.

**BILL**

**224.79 Consumer mortgage brokerage agreements and consumer disclosures. (1) FORM AND CONTENT OF CONSUMER MORTGAGE BROKERAGE AGREEMENTS.**

Every contract between a mortgage broker and a consumer under which the mortgage broker agrees to provide brokerage services to the consumer shall be in writing, in the form prescribed by rule of the division, and shall contain all information required by rule of the division. The division shall promulgate rules to administer this subsection. *in consultation with the loan originator advisory council under s. 15.187* The division shall design these rules to facilitate the comparison of similar charges and total charges assessed by different mortgage brokers.

**(2) CONSUMER DISCLOSURE STATEMENT.** Before entering into a contract with a consumer to provide brokerage services, a mortgage broker shall give the consumer a copy of a consumer disclosure statement, explain the content of the statement, and ensure that the consumer initials or signs the statement, acknowledging that the consumer has read and understands the statement. The consumer disclosure statement shall contain a brief explanation of the relationship between the consumer and the mortgage broker under the proposed contract, a brief explanation of the manner in which the mortgage broker may be compensated under the proposed contract, and any additional information required by rule of the division. The division shall promulgate rules to administer this subsection and, by rule, shall specify the form and content of the consumer disclosure statement required under this subsection.

**SECTION 19.** 224.80 (1) of the statutes is amended to read:

**224.80 (1) PENALTIES.** A person who violates s. 224.72 (1m) may be fined not more than ~~\$1,000~~ \$2,000 or imprisoned for not more than ~~6~~ 9 months or both. The

**BILL**

1 district attorney of the county where the violation occurs shall enforce the penalty  
2 under this subsection on behalf of the state.

3 **SECTION 20.** 224.80 (2) (a) 1. of the statutes is amended to read:

4 224.80 (2) (a) 1. Twice the amount of the cost of loan origination connected with  
5 the transaction, except that the liability under this subdivision may not be less than  
6 \$100 nor greater than ~~\$1,000~~ \$2,000 for each violation.

7 **SECTION 21. Nonstatutory provisions.**

8 (1) REGISTRATION OF FORMERLY EXEMPT PERSONS. Notwithstanding section 224.72  
9 (1m) of the statutes, any licensee under chapter 138 of the statutes that satisfies the  
10 definition of "mortgage banker" or "mortgage broker" under section 224.71 (3) or (4)  
11 of the statutes, as affected by this act, shall apply for a certificate of registration  
12 under section 224.72 of the statutes, as affected by this act, no later than the 60th  
13 day following the effective date of this subsection.

14 (2) POSITION INCREASE. The authorized FTE positions for the department of  
15 financial institutions are increased by 2.0 PR positions, to be funded from the  
16 appropriation under section 20.144 (1) (g) of the statutes, for the purpose of  
17 administering section 224.72 of the statutes, as affected by this act.

18 ~~(1)~~ <sup>(2)</sup> ~~LOAN ORIGINATOR REVIEW BOARD~~ <sup>ADVISORY COUNCIL</sup>; INITIAL TERMS. Notwithstanding the length  
19 of terms specified for members of the loan originator ~~review board~~ <sup>advisory council</sup> under section  
20 15.185 (5) <sup>(187(1))</sup> of the statutes, as created by this act, the initial members shall be  
21 appointed for the following terms: 15.187(1)

22 (a) The members specified under section 15.185 (5) (a) ~~and (b)~~ of the statutes,  
23 as created by this act, for terms expiring on <sup>July</sup> ~~May~~ 1, 2005.

24 (b) The members specified under section 15.185 (5) ~~(a)~~ <sup>(187(1))</sup> and (d) of the statutes,  
25 as created by this act, for terms expiring on <sup>July</sup> ~~May~~ 1, 2007. (b) 10



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SECTION 1. 15.09 (6) of the statutes is amended to read:

15.09 (6) REIMBURSEMENT FOR EXPENSES. Members of a council shall not be compensated for their services, but, except as otherwise provided in this subsection, members of councils created by statute shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an elective or appointive officer or employee of this state who represents an agency as a member of a council to be paid by the agency which pays his or her salary. Members of the loan originator ~~advisory~~ council under s. 15.187 (1) may not be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

History: 1971 c. 211; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 34, 346; 1983 a. 27, 388, 410; 1985 a. 84; 1989 a. 335; 1991 a. 39, 189; 1993 a. 184.