

2003 Senate Bill 279

Date of enactment: **April 15, 2004**
Date of publication*: **April 29, 2004**

2003 WISCONSIN ACT 260

AN ACT *to renumber* 224.71 (1c) and 224.72 (3); *to amend* 15.09 (6), 224.72 (3) (title), 224.72 (5) (a), 224.72 (7m) (intro.), 224.77 (1m) (a), 224.80 (1) and 224.80 (2) (a) 1.; and *to create* 15.187, 224.71 (1ag), 224.71 (1d), 224.71 (1u), 224.72 (3) (b), 224.72 (3) (c), 224.72 (7) (d) and (e), 224.72 (7m) (am), 224.72 (7p), 224.73 (4), 224.755 and 224.79 of the statutes; **relating to:** qualifications of certain agents of mortgage bankers and mortgage brokers, consumer mortgage brokerage agreements, granting rule-making authority, and providing a penalty.

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

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 council under s. 15.187 (1) may not be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

SECTION 2. 15.187 of the statutes is created to read:

15.187 Same; councils. (1) LOAN ORIGINATOR REVIEW COUNCIL. There is created in the department of financial institutions a loan originator council. The council shall consist of the following members, appointed by the secretary of financial institutions for 4-year terms:

(a) Three persons who are loan originators registered under s. 224.72 (1m).

(b) One person who is an agent of a mortgage broker registered under s. 224.72 (1m).

(c) One person who is an agent of a mortgage banker registered under s. 224.72 (1m).

(d) One person who is a loan solicitor, as defined in s. 224.71 (1u), registered under s. 224.72 (1m).

(e) The secretary of financial institutions or his or her designee.

SECTION 3. 224.71 (1ag) of the statutes is created to read:

224.71 (1ag) "Affiliate," when used in reference to any person, means another person who controls, is controlled by, or is under common control with the person.

SECTION 4. 224.71 (1c) of the statutes is renumbered 224.71 (1e).

SECTION 5. 224.71 (1d) of the statutes is created to read:

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

SECTION 5m. 224.71 (1u) of the statutes is created to read:

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

224.71 (1u) "Loan solicitor" means a type of loan originator as defined by rule by the division under s. 224.72 (7p) (a).

SECTION 6. 224.72 (3) (title) of the statutes is amended to read:

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

SECTION 7. 224.72 (3) of the statutes is renumbered 224.72 (3) (a).

SECTION 8. 224.72 (3) (b) of the statutes is created to read:

224.72 (3) (b) In addition to the requirements of sub. (2), each applicant for registration as a loan originator, other than an applicant employed by an affiliate of a credit union or of an entity described under s. 224.71 (3) (b) 1., shall pass a written examination, approved by the loan originator council, covering primary and subordinate mortgage financing transactions and the provisions of this subchapter. The examination shall be administered by the technical college system board, a professional trade association whose members include loan originators, or any other person approved by the division.

SECTION 9. 224.72 (3) (c) of the statutes is created to read:

224.72 (3) (c) The employer of each applicant for registration as a loan originator, other than an applicant employed by an affiliate of a credit union or of an entity described under s. 224.71 (3) (b) 1., shall obtain a criminal history search relating to the applicant from the records maintained by the department of justice and submit the results of the search to the division.

SECTION 10. 224.72 (5) (a) of the statutes is amended to read:

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

SECTION 11. 224.72 (7) (d) and (e) of the statutes are created to read:

224.72 (7) (d) 1. Except as provided in subd. 2., an applicant for renewal of a certificate of registration as a loan originator, other than an applicant employed by an affiliate of a credit union or of an entity described under s. 224.71 (3) (b) 1., shall, as part of the application, submit evidence that is satisfactory to the division that, during the 2 years preceding the date of application, the applicant has successfully completed at least 16 hours, or, if the applicant is a loan solicitor, at least the minimum number of hours established by rule by the division, of education approved by the loan originator council covering primary and subordinate mortgage financing transactions and the provisions of this subchapter.

2. No later than June 30 of each year, the technical college system board, a professional trade association whose members include loan originators, or any other person approved by the division shall administer an examination or series of examinations, approved by the loan originator council, 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 or series of examinations under this subdivision during the 2 years immediately preceding the date of application is not required to comply with subd. 1.

(e) If an applicant for renewal of a certificate of registration as a loan originator has changed employers since his or her criminal history was last searched under this paragraph or sub. (3) (c), the applicant's current employer shall obtain a criminal history search relating to the applicant from the records maintained by the department of justice and submit the results of the search to the division.

SECTION 12. 224.72 (7m) (intro.) of the statutes is amended to read:

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

SECTION 13. 224.72 (7m) (am) of the statutes is created to read:

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

SECTION 14. 224.72 (7p) of the statutes is created to read:

224.72 (7p) **RULES RELATING TO LOAN SOLICITORS, COMPETENCY EXAMINATIONS, AND CONTINUING EDUCATION.** The division shall promulgate rules that do all of the following:

(a) Define loan solicitor, which definition shall reflect the limited scope of duties and activities performed by loan solicitors in comparison with loan originators who are not loan solicitors.

(b) Establish standards for the approval by the loan originator council of examinations in the law of mortgage banking and mortgage brokering under subs. (3) (b) and (7) (d) 2. The rules shall require that a separate examination be available for loan solicitors, the standards for which reflect the limited scope of duties and activities performed by loan solicitors in comparison with loan originators who are not loan solicitors and reflect the reduction in hours of education required of loan solicitors under par. (c) and sub. (7) (d) 1.

(c) Establish standards for the approval by the loan originator council of the curricula of education under sub. (7) (d) 1. and the minimum number of hours, which shall be less than 16, of education required of loan solicitors under sub. (7) (d) 1. The rules shall establish separate standards for curricula for loan solicitors that reflect the limited scope of duties and activities performed by loan solicitors in comparison with loan originators who are not loan solicitors and reflect the reduction in hours of education required of loan solicitors under this paragraph and sub. (7) (d) 1.

SECTION 14m. 224.73 (4) of the statutes is created to read:

224.73 (4) SIGNATURE BY LOAN ORIGINATOR. Every loan application shall be signed by a registered loan originator.

SECTION 15. 224.755 of the statutes is created to read:

224.755 Continuing education and examination records. A loan originator shall keep records documenting compliance with s. 224.72 (7) (d) for at least 4 years. The technical college system board and any professional trade association or other person that administers examinations or provides education under s. 224.72 (7) (d) shall maintain records documenting attendance and examination performance for at least 4 years.

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

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

SECTION 17. 224.79 of the statutes is created to read:

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 council under s. 15.187 (1). 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 in consultation with the loan originator council under s. 15.187 (1) and, by rule, shall specify the form and content of the consumer disclosure statement required under this subsection.

SECTION 18. 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 district attorney of the county where the violation occurs shall enforce the penalty under this subsection on behalf of the state.

SECTION 19. 224.80 (2) (a) 1. of the statutes is amended to read:

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

SECTION 20. Nonstatutory provisions.

(1) **LOAN ORIGINATOR COUNCIL; INITIAL TERMS.** Notwithstanding the length of terms specified for members of the loan originator council under section 15.187 (1) of the statutes, as created by this act, the initial members shall be appointed for the following terms:

(a) The members specified under section 15.187 (1) (a) of the statutes, as created by this act, for terms expiring on July 1, 2005.

(b) The members specified under section 15.187 (1) (b) to (d) of the statutes, as created by this act, for terms expiring on July 1, 2007.

SECTION 21. Initial applicability.

(1) **COMPETENCY EXAMINATION.** The treatment of section 224.72 (3) (b) of the statutes first applies to applications for a certificate of registration as a loan originator that are pending with the division of banking on July 2, 2005.

(2) **CONTINUING EDUCATION.** The treatment of section 224.72 (7) (d) of the statutes first applies to applications for renewal of a certificate of registration as a loan originator for the registration period beginning July 1, 2007.