

2003 SENATE BILL 279

October 21, 2003 – Introduced by Senators SCHULTZ, S. FITZGERALD, KANAVAS, LAZICH, WIRCH, LASSA, BRESKE, PLALE, M. MEYER, STEPP, KEDZIE and ROESSLER, cosponsored by Representatives JESKEWITZ, MONTGOMERY, LADWIG, GUNDERSON, WIECKERT, FREESE, KREIBICH, BIES, SERATTI, M. LEHMAN, HINES, KERKMAN, KESTELL, LOEFFELHOLZ, SHILLING, VRAKAS, VAN ROY, J. FITZGERALD, WASSERMAN, NISCHKE, KRAWCZYK, HAHN, TOWNSEND, ZEPNICK, LEMAHIEU and OLSEN. Referred to Committee on Agriculture, Financial Institutions and Insurance.

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

Analysis by the Legislative Reference Bureau

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

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

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requirement must be satisfied as a condition of the Division of Banking (division) approving an application for registration as a loan originator. This examination requirement first applies to persons who have applications pending on July 2, 2004.

The 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 or series of examinations demonstrating satisfactory knowledge of these subjects. This requirement first applies to persons who have applications pending on July 1, 2006.

The bill creates a loan originator council for the purpose of approving the program of continuing education and the content of the competency examinations. The division, by rule, must establish standards for the loan originator council to follow in approving the program of continuing education and the content of the competency examination.

Criminal background checks

The bill requires the employer of each applicant for registration as a loan originator, or, in certain cases, 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 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. The rules required under these provisions must be promulgated in consultation with the loan originator 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

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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.

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

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

2 15.09 (6) REIMBURSEMENT FOR EXPENSES. Members of a council shall not be
3 compensated for their services, but, except as otherwise provided in this subsection,
4 members of councils created by statute shall be reimbursed for their actual and
5 necessary expenses incurred in the performance of their duties, such reimbursement
6 in the case of an elective or appointive officer or employee of this state who represents
7 an agency as a member of a council to be paid by the agency which pays his or her
8 salary. Members of the loan originator council under s. 15.187 (1) may not be
9 reimbursed for their actual and necessary expenses incurred in the performance of
10 their duties.

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

12 **15.187 Same; councils. (1) LOAN ORIGINATOR REVIEW COUNCIL.** There is
13 created in the department of financial institutions a loan originator council. The
14 council shall consist of the following members, appointed by the secretary of financial
15 institutions for 4-year terms:

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

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1 (b) One person who is an agent of a mortgage broker registered under s. 224.72
2 (1m).

3 (c) One person who is an agent of a mortgage banker registered under s. 224.72
4 (1m).

5 (d) One person who represents the public interest.

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

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

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

9 224.71 (1d) “Consumer” means a person other than an organization, as defined
10 in s. 421.301 (28), who seeks or acquires mortgage brokerage services for personal,
11 family, or household purposes.

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

13 224.72 (3) (title) ~~ADDITIONAL REQUIREMENT~~ REQUIREMENTS FOR LOAN ORIGINATOR
14 APPLICANT.

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

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

17 224.72 (3) (b) In addition to the requirements of sub. (2), each applicant for
18 registration as a loan originator shall pass a written examination, approved by the
19 loan originator council, covering primary and subordinate mortgage financing
20 transactions and the provisions of this subchapter. The examination shall be
21 administered by the technical college system board or a professional trade
22 association whose members include loan originators.

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

24 224.72 (3) (c) The employer of each applicant for registration as a loan
25 originator shall obtain a criminal history search relating to the applicant from the

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

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

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

9 **SECTION 10.** 224.72 (7) (d) and (e) of the statutes are created to read:

10 224.72 (7) (d) 1. Except as provided in subd. 2., an applicant for renewal of a
11 certificate of registration as a loan originator shall, as part of the application, submit
12 evidence that is satisfactory to the division that, during the 2 years preceding the
13 date of application, the applicant has successfully completed at least 16 hours of
14 education approved by the loan originator council covering primary and subordinate
15 mortgage financing transactions and the provisions of this subchapter.

16 2. No later than June 30 annually, the technical college system board or a
17 professional trade association whose members include loan originators shall
18 administer an examination or series of examinations, approved by the loan
19 originator council, on the educational subjects required under subd. 1. Any applicant
20 who, as part of the application, submits evidence that is satisfactory to the division
21 that the applicant has passed the examination or series of examinations under this
22 subdivision during the 2 years immediately preceding the date of application is not
23 required to comply with subd. 1.

24 (e) If an applicant for renewal of a certificate of registration as a loan originator
25 has changed employers since his or her criminal history was last searched under this

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1 paragraph or sub. (3) (c), the applicant's current employer shall obtain a criminal
2 history search relating to the applicant from the records maintained by the
3 department of justice and submit the results of the search to the division.

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

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

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

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

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

14 **224.72 (7p) RULES FOR APPROVAL OF COMPETENCY EXAMINATIONS AND CONTINUING**
15 **EDUCATION.** The division shall promulgate rules establishing standards for the
16 approval by the loan originator council of examinations in the law of mortgage
17 banking and mortgage brokering under subs. (3) (b) and (7) (d) and the curricula of
18 education under sub. (7) (d).

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

20 **224.755 Continuing education and examination records.** A loan
21 originator shall keep records documenting compliance with s. 224.72 (7) (d) for at
22 least 4 years. The technical college system board and any professional trade
23 association that administers examinations or provides education under s. 224.72 (7)
24 (d) shall maintain records documenting attendance and examination performance
25 for at least 4 years.

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

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

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

6 **224.79 Consumer mortgage brokerage agreements and consumer**
7 **disclosures. (1)** FORM AND CONTENT OF CONSUMER MORTGAGE BROKERAGE AGREEMENTS.
8 Every contract between a mortgage broker and a consumer under which the
9 mortgage broker agrees to provide brokerage services to the consumer shall be in
10 writing, in the form prescribed by rule of the division, and shall contain all
11 information required by rule of the division. The division shall promulgate rules to
12 administer this subsection in consultation with the loan originator council under s.
13 15.187 (1). The division shall design these rules to facilitate the comparison of
14 similar charges and total charges assessed by different mortgage brokers.

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

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

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

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

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

9 224.80 (2) (a) 1. Twice the amount of the cost of loan origination connected with
10 the transaction, except that the liability under this subdivision may not be less than
11 \$100 nor greater than ~~\$1,000~~ \$2,000 for each violation.

12 **SECTION 19. Nonstatutory provisions.**

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

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

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

21 **SECTION 20. Initial applicability.**

22 (1) COMPETENCY EXAMINATION. The treatment of section 224.72 (3) (b) of the
23 statutes first applies to applications for a certificate of registration as a loan
24 originator that are pending with the division of banking on July 2, 2004.

