



2013 SENATE BILL 441

December 16, 2013 – Introduced by Senator HANSEN. Referred to Committee on Insurance and Housing.

1 **AN ACT** *to renumber and amend* 224.74 (1) (b); *to amend* 224.74 (1) (b) (title);
2 and *to create* 224.74 (1) (b) 2. of the statutes; **relating to:** reporting by certain
3 mortgage brokers.

Analysis by the Legislative Reference Bureau

Under current law, a person may not act as a mortgage banker, mortgage broker, or mortgage loan originator unless the person is licensed as such with the Division of Banking in the Department of Financial Institutions (division). A mortgage banker is, with certain exceptions, a person who originates residential mortgage loans (loans) for itself or for another person; sells loans or interests in loans to another person; or services loans or provides escrow services. A mortgage broker is, with certain exceptions, a person who, on behalf of a loan applicant or an investor and for commission or other compensation, finds a loan or negotiates a loan or loan commitment. A mortgage loan originator is, with certain exceptions, an individual who takes a loan application or offers or negotiates terms of a loan for compensation or gain. State and federally chartered financial institutions are not mortgage bankers or mortgage brokers. Beginning on January 1, 2010, provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 were adopted into state law, including provisions requiring that certain state licensing and registration functions be conducted through the Nationwide Mortgage Licensing System and Registry (NMLSR) developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

SENATE BILL 441

Current law requires each mortgage banker, mortgage broker, and mortgage loan originator to annually submit to the NMLSR, by the date and in the form required by the NMLSR, an annual report of condition, which must contain any information required by the NMLSR. In addition, no later than six months after the end of a fiscal year, each mortgage banker or mortgage broker must annually submit a copy of an audit of the mortgage banker's or mortgage broker's operations during the prior fiscal year. The audit must be conducted by an independent certified public accountant (CPA) in accordance with generally accepted auditing standards. The financial statements in the audit report must be prepared in accordance with generally accepted accounting principles (GAAP). The division may also request a mortgage banker or mortgage broker to obtain an audit of the mortgage banker's or mortgage broker's operations if the division has reason to believe that the mortgage banker or mortgage broker may not have sufficient financial resources to meet its obligations.

This bill eliminates the annual audit requirement for a mortgage broker that employed five or fewer employees and had less than \$750,000 in gross revenues in the prior fiscal year (small mortgage broker). The bill instead requires that a small mortgage broker annually submit a prepared financial statement of the small mortgage broker's operations for the prior fiscal year. This financial statement must be prepared by an independent CPA in accordance with GAAP. An officer of the small mortgage broker must also attest in writing and certify that the financial statement is complete and accurate.

For further information see the *state* 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.** 224.74 (1) (b) (title) of the statutes is amended to read:

2 224.74 (1) (b) (title) *Audit requirement and financial statement requirements.*

3 **SECTION 2.** 224.74 (1) (b) of the statutes is renumbered 224.74 (1) (b) 1. and
4 amended to read:

5 224.74 (1) (b) 1. ~~Each~~ Except as provided in subd. 2., each year, no later than
6 6 months following the end of its most recently completed fiscal year, each mortgage
7 banker or mortgage broker shall submit a copy of an audit of the mortgage banker's
8 or mortgage broker's operations during that most recently completed fiscal year. An
9 audit under this paragraph subdivision shall be conducted by an independent

SENATE BILL 441

1 certified public accountant in accordance with generally accepted auditing
2 standards. The financial statements in the audit report shall be prepared in
3 accordance with generally accepted accounting principles.

4 **SECTION 3.** 224.74 (1) (b) 2. of the statutes is created to read:

5 224.74 (1) (b) 2. Each year, no later than 6 months following the end of its most
6 recently completed fiscal year, each mortgage broker that employed 5 or fewer
7 employees and had less than \$750,000 in gross revenues in its most recently
8 completed fiscal year shall submit a prepared financial statement of the mortgage
9 broker's operations during that most recently completed fiscal year. A financial
10 statement under this subdivision shall be prepared by an independent certified
11 public accountant in accordance with generally accepted accounting principles. An
12 officer of the mortgage broker shall attest in writing and certify that the financial
13 statement is complete and accurate.

14 **SECTION 4. Initial applicability.**

15 (1) This act first applies to submissions made on the effective date of this
16 subsection.

17 **SECTION 5. Effective date.**

18 (1) This act takes effect on the first day of the 3rd month beginning after
19 publication.

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(END)