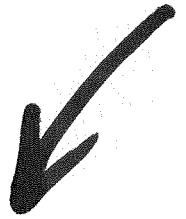




# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU



## Appendix A ... segment II

### LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for

2011 LRB-2625/3 (For: Senator Hansen)


has been transferred to the drafting file for

**2013 LRB-1311** (For: Senator Hansen)



**RESEARCH APPENDIX -**  
**PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 01/25/2013 (Per: ARG)

 The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin  
2011 - 2012 LEGISLATURE

TODAY



LRB-2625/1  
ARG:sbb&jld:rs

in 12/19

RMR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

2011 BILL

No changes

Regen

4

- 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
- 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. In 2009 Wisconsin Act 2 (Act 2), 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.

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 requirement that a mortgage broker annually submit a copy of an audit of the mortgage broker's operations during the prior fiscal year. The bill instead requires that a mortgage broker annually submit a prepared financial statement of the mortgage broker's operators for the prior fiscal year. This financial statement must be prepared by an independent CPA in accordance with GAAP. An officer of the 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 year, no later than 6 months following the end of its most  
6 recently completed fiscal year, each mortgage banker ~~or mortgage broker~~ shall  
7 submit a copy of an audit of the mortgage banker's ~~or mortgage broker's~~ operations  
8 during that most recently completed fiscal year. An audit under this paragraph  
9 subdivision shall be conducted by an independent certified public accountant in  
10 accordance with generally accepted auditing standards. The financial statements

1 in the audit report shall be prepared in accordance with generally accepted  
2 accounting principles.

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

4 224.74 (1) (b) 2. Each year, no later than 6 months following the end of its most  
5 recently completed fiscal year, each mortgage broker shall submit a prepared  
6 financial statement of the mortgage broker's operations during that most recently  
7 completed fiscal year. A financial statement under this subdivision shall be prepared  
8 by an independent certified public accountant in accordance with generally accepted  
9 accounting principles. An officer of the mortgage broker shall attest in writing and  
10 certify that the financial statement is complete and accurate.

11 **SECTION 4. Initial applicability.**

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

14 **SECTION 5. Effective date.**

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

17 (END)

## Gary, Aaron

---

**From:** Gary, Aaron  
**Sent:** Thursday, January 19, 2012 12:27 PM  
**To:** Wadd, Jay  
**Subject:** RE: Question: LRB-2625

Jay,

Following up on our conversation, I wanted to report back the following:

1. Under LRB-2625, p. 3, lines 9-10: If the officer falsely certifies that the financial statement is complete and accurate, the officer is subject to a penalty under the current draft. Section 224.77 (1) (a) prohibits an officer of a mortgage broker from making a material misstatement, or knowingly omitting a material fact, in information or reports furnished to DFI or the nationwide mortgage licensing system and registry. There are a couple of ways this conduct can be punished. First, DFI can bring an administrative proceeding and impose a civil forfeiture of up to \$25,000 for the violation. Second, the violation can be prosecuted as a crime by the DA, punishable by fine of up to \$25,000 and/or imprisonment of up to 9 months. Again, this would be under the bill as currently drafted.

2. If I were to change LRB-2625 so that the officer has to sign the financial statement under oath, then the officer might also be subject to punishment for the crime of "false swearing" under s. 946.32 if the officer signs the statement and does not believe it is true. The penalty could be either a Class H felony (fine not to exceed \$10,000 and/or imprisonment not to exceed 6 years) or a Class A misdemeanor (fine not to exceed \$10,000 and/or imprisonment not to exceed 9 months) depending on how it is charged.

Do you want me to draft a new version of LRB-2625/1 that requires the officer's signature to be made under oath? If not, do you want me to redraft LRB-2625/1 to correct the typo in the analysis (p. 2, second paragraph, 4th line in the middle, "operators" should be "operations").

Thanks. Aaron

→ yes, fix typo 1/19

Aaron R. Gary  
Attorney, Legislative Reference Bureau  
608.261.6926 (voice)  
608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

---

**From:** Wadd, Jay  
**Sent:** Wednesday, January 18, 2012 4:34 PM  
**To:** Gary, Aaron  
**Subject:** Question: LRB-2625

Aaron,

Do you have a moment to talk about our mortgage broker bill?

Thanks,

Jay



Now



in 1/19

KMR

# 2011 BILL

one change - p. 2 typo

4

Regen

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  
 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. In 2009 Wisconsin Act 2 (Act 2), 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.

**BILL**

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 requirement that a mortgage broker annually submit a copy of an audit of the mortgage broker's operations during the prior fiscal year. The bill instead requires that a mortgage broker annually submit a prepared financial statement of the mortgage broker's ~~operations~~ <sup>operations</sup> for the prior fiscal year. This financial statement must be prepared by an independent CPA in accordance with GAAP. An officer of the 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.

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*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.*

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4 amended to read:

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6 recently completed fiscal year, each mortgage banker ~~or mortgage broker~~ shall  
7 submit a copy of an audit of the mortgage banker's ~~or mortgage broker's~~ operations  
8 during that most recently completed fiscal year. An audit under this paragraph  
9 subdivision shall be conducted by an independent certified public accountant in  
10 accordance with generally accepted auditing standards. The financial statements

**BILL**

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2 accounting principles.

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

4 224.74 (1) (b) 2. Each year, no later than 6 months following the end of its most  
5 recently completed fiscal year, each mortgage broker shall submit a prepared  
6 financial statement of the mortgage broker's operations during that most recently  
7 completed fiscal year. A financial statement under this subdivision shall be prepared  
8 by an independent certified public accountant in accordance with generally accepted  
9 accounting principles. An officer of the mortgage broker shall attest in writing and  
10 certify that the financial statement is complete and accurate.

11 **SECTION 4. Initial applicability.**

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

14 **SECTION 5. Effective date.**

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

17 (END)



## Gary, Aaron

---

**From:** Wadd, Jay  
**Sent:** Monday, February 06, 2012 2:29 PM  
**To:** Gary, Aaron  
**Subject:** RE: LRB--2625/2

Sure thing, Aaron. And maybe I'll just have you hold off on jacketing again until I'm sure I have all the bugs sorted out on this one.

Thanks again for all your help.

---

**From:** Gary, Aaron  
**Sent:** Monday, February 06, 2012 2:27 PM  
**To:** Wadd, Jay  
**Subject:** RE: LRB--2625/2

Hi Jay,  
I believe I can made these changes. Can you send the jacket back? I'll let you know as I'm drafting if I have any questions. Aaron

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
608.261.6926 (voice)  
608.264.6948 (fax)  
[aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)

---

**From:** Wadd, Jay  
**Sent:** Monday, February 06, 2012 2:04 PM  
**To:** Gary, Aaron  
**Subject:** LRB--2625/2

Hi, Aaron,

As it turns out our draft, LRB-2625 is in need of more changes.

Is it possible to have this bill apply only to mortgage brokers with 5 or less employees and who do less than \$750,000 in revenue?

Can we give the DFI the authority to require a certified audit of an individual broker/brokerage firm as it deems necessary to protect consumers?

Thanks for all your help on this,

Jay

## Gary, Aaron

---

**From:** Gary, Aaron  
**Sent:** Tuesday, February 07, 2012 10:36 AM  
**To:** Wadd, Jay  
**Subject:** RE: LRB--2625/2

Jay,

Please see my further responses below. I finished the redraft and it is now in editing. Aaron

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
608.261.6926 (voice)  
608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

---

**From:** Wadd, Jay  
**Sent:** Monday, February 06, 2012 2:04 PM  
**To:** Gary, Aaron  
**Subject:** LRB--2625/2

Hi, Aaron,

As it turns out our draft, LRB-2625 is in need of more changes.

Is it possible to have this bill apply only to mortgage brokers with 5 or less employees and who do less than \$750,000 in revenue? I made this change.

Can we give the DFI the authority to require a certified audit of an individual broker/brokerage firm as it deems necessary to protect consumers? Current law already gives DFI this audit authority. See s. 224.74 (1) (c) for specifics - please let me know if you think the current provision is not sufficient - but it seems pretty broad and forceful to me.

Thanks for all your help on this,

Jay



State of Wisconsin  
2011 - 2012 LEGISLATURE

seen



LRB-2625/21 3  
ARG:sbb&jld:rs

in  
2/7

run

2011 BILL

4

Regen

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  
3 *certain* mortgage brokers. ✓

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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. In 2009 Wisconsin Act 2 (Act 2), 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.

**BILL**

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 requirement <sup>annual audit for</sup> ~~that~~ a mortgage broker <sup>insert ANAC</sup> ~~annually submit a copy of an audit of the mortgage broker's operations during the prior fiscal year.~~ The bill instead requires that a mortgage broker annually submit a prepared financial statement of the 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 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:***

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6 recently completed fiscal year, each mortgage banker or mortgage broker shall  
7 submit a copy of an audit of the mortgage banker's or mortgage broker's operations  
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9 subdivision shall be conducted by an independent certified public accountant in  
10 accordance with generally accepted auditing standards. The financial statements

small

insert ANAC

insert 2-5

**BILL**

1 in the audit report shall be prepared in accordance with generally accepted  
2 accounting principles.

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13 subsection.

14 **SECTION 5. Effective date.**

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16 publication.

17 (END)

ment  
3-5

2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2625/3ins  
ARG:.....

1           **INSERT ANAL:**

2           ~~no P~~ that employed five<sup>✓</sup> or fewer employees and had less than<sup>✓</sup> \$750,000 in gross  
3           revenues in the prior fiscal year (small mortgage broker).<sup>✓</sup>

4           **INSERT 2-5:**

5           ~~no P~~ Each Except as provided in subd. 2.<sup>✓</sup> each year, no later than 6 months following  
6           the end of its most recently completed fiscal year, each mortgage banker or mortgage  
7           broker shall submit a copy of an audit of the mortgage banker's or mortgage broker's  
8           operations during that most recently completed<sup>✓</sup> fiscal year. An audit under this  
9           ~~paragraph~~ subdivision<sup>✓</sup> shall be conducted by an independent certified public  
10          accountant in accordance with generally accepted auditing standards. The financial  
11          statements in the audit report shall be prepared in accordance with generally  
12          accepted accounting principles.

13          **INSERT 3-5:**

14          ~~no P~~ that employed 5<sup>✓</sup> or fewer employees and had less than<sup>✓</sup> \$750,000 in gross  
15          revenues in its most recently completed fiscal year ~~no P~~





State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-2625/3  
ARG:sbb&jld:jm

## 2011 BILL

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**BILL**

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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.

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4 amended to read:

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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  
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9 audit under this paragraph subdivision shall be conducted by an independent

**BILL**

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