

2013 DRAFTING REQUEST

Bill

Received: 1/24/2014 Received By: agary
Wanted: As time permits Same as LRB: -3853
For: Frank Lasee (608) 266-3512 By/Representing: Rob Kovach
May Contact: Drafter: agary
Subject: Fin. Inst. - banking inst. Addl. Drafters:
Fin. Inst. - int. rates/loans Extra Copies:
Submit via email: YES
Requester's email: Sen.Lasee@legis.wisconsin.gov
Carbon copy (CC) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Changes relating to mortgage bankers, mortgage brokers, and mortgage loan originators

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 1/24/2014	scalvin 1/24/2014		_____			
/1	agary 1/24/2014	scalvin 1/24/2014	jfrantze 1/24/2014	_____	mbarman 1/24/2014	mbarman 1/24/2014	State S&L

FE Sent For:

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INTRO.

<END>

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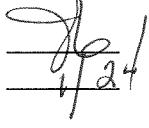
Topic:

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See attached

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1?	agary	1 SAC 01/24/2014	1 SAC 01/24/2014	 1/24			

FE Sent For:

<END>

PA's: Please
jacket 11.
Thx. ARG

Gary, Aaron

From: LRB.Legal
Sent: Friday, January 24, 2014 9:34 AM
To: Gary, Aaron
Subject: FW: Cosponsorship of LRB 3853-Strengthening our mortgage industry
Attachments: 13-3853_1.pdf

From: Kovach, Robert
Sent: Friday, January 24, 2014 9:29 AM
To: LRB.Legal
Cc: Schacht, Nathan; Zikmund, Alison
Subject: FW: Cosponsorship of LRB 3853-Strengthening our mortgage industry

I need a senate version of this jacketed. Thanks!

Rob Kovach

Policy Advisor/Committee Clerk
Office of Senator Frank Lasee
(608) 266-3512

From: Rep.Weininger
Sent: Thursday, January 23, 2014 4:03 PM
To: *Legislative All Senate; *Legislative All Assembly
Subject: Cosponsorship of LRB 3853-Strengthening our mortgage industry

TO: Legislative Colleagues
FROM: Rep. Chad Weininger, Rep. Dave Craig, Sen. Frank Lasee
DATE: Thursday, January 23, 2014
RE: Co-sponsorship of LRB 3853 Relating to: Changes relating to mortgage bankers, mortgage brokers, and mortgage loan originators

Short Deadline: Monday, January 27, 2014 at 4pm

In 2008, Congress passed the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) in an attempt to enhance consumer protection and set minimum standards for state licensing of the mortgage industry. The SAFE Act provided certain minimum standards for mortgage loan originators (MLO) and then required states to establish a licensing system that at least met those standards. In 2009 the State of Wisconsin passed Act 2 (a budget adjustment act), in part, in an attempt to bring Wisconsin into compliance with the federal SAFE Act.

Unfortunately, as federal agencies have interpreted the federal SAFE Act it has become apparent that further clarification needs to be made to Wisconsin statutes in order to ensure our state continues to have a mortgage industry that is able to effectively provide the financing our constituents need. As such, in consultation with the Department of Financial Institutions and various industry experts, we have drafted this legislation in order to ensure our state maintains a strong, responsible mortgage industry. This bill is at the request of the Department of Financial Institutions.

A copy of LRB 3853 is attached.

If you wish to join us in co-sponsoring this legislation, please contact Alison Zikmund in Rep. Weininger's office at 6-1184 or at rep.weininger@legis.wi.gov. Deadline is **Monday at 4pm**.



State of Wisconsin
2013 - 2014 LEGISLATURE

TODAY



LRB-3883/2-4099/1

in
1/24

ARG:sac&eev/jf De

stays
RM/R

2013 BILL

By 3pm if possible

RB

gencat

1 AN ACT *to repeal* 224.71 (3) (b) (intro.) and 7., 224.71 (6) (b) (intro.) and 4., 224.71
2 (8), 224.72 (4n), 224.725 (2) (d), 224.726 (intro.), (1) (intro.), (2) and (3), 224.73
3 (4) (title) and (a) and 224.83; *to renumber* 224.71 (3) (b) 8., 224.71 (3) (b) 9.,
4 224.71 (3) (b) 10., 224.71 (3) (b) 11., 224.71 (3) (b) 12., 224.71 (6) (b) 2., 224.71
5 (6) (b) 3., 224.72 (2m) and 224.726 (1) (a) and (b); *to renumber and amend*
6 224.71 (3) (a) (intro.), 1., 2. and 3., 224.71 (6) (a) (intro.), 1. and 2., 224.71 (6) (b)
7 1., 224.726 (4) and 224.73 (4) (b); *to amend* 224.71 (1c), 224.71 (1f), 224.71 (1h),
8 224.71 (2) (intro.), 224.71 (7), 224.71 (13) (c), 224.72 (1m), 224.72 (2) (c) 2.,
9 224.72 (4) (a) 2., 224.725 (1), 224.725 (3) (b), 224.725 (4) (a), 224.73 (title), 224.73
10 (1), 224.73 (2), 224.73 (3), 224.74 (title), 224.74 (1) (title), 224.74 (1) (a), 224.74
11 (1) (b), 224.75 (2), 224.755 (4) (d), 224.755 (4) (e), 224.77 (title), 224.77 (1)
12 (intro.), 224.77 (1) (f), 224.77 (1) (fg), 224.77 (1) (g), 224.77 (1) (gd), 224.77 (1)
13 (gh), 224.77 (2m) (a) 1. (intro.), a. and b. and 943.80 (2); *to repeal and recreate*
14 224.71 (4); and *to create* 224.71 (1br), 224.71 (1g), 224.71 (1gh), 224.71 (1r),

BILL

1 224.71 (6) (d) 1., 2. and 3., 224.71 (13c), 224.71 (13g) (intro.), 224.71 (13m),
2 224.72 (1r) (intro.), (c), (e) and (f), 224.72 (2m) (b) and (c), 224.722, 224.725 (1m)
3 (intro.), (a), (b), (f) and (g) 1., 2. and 3., 224.73 (5), 224.74 (1) (bm) and 224.77
4 (1) (sm) and (sq) of the statutes; **relating to:** the regulation of mortgage loan
5 originators, mortgage brokers, and mortgage bankers.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, a person may not engage in business as, or otherwise act as, a mortgage banker, mortgage broker, or mortgage loan originator unless the person is licensed as such with the Department of Financial Institutions (DFI). 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 (depository institutions) are not mortgage bankers or mortgage brokers and are not required to be licensed as such. 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).

This bill modifies the definitions of mortgage loan originator, mortgage broker, and mortgage banker. For purposes of the definition of mortgage loan originator, the bill specifies circumstances under which an individual is considered to offer or negotiate terms of a loan. Current law includes provisions that create exceptions to the definition of mortgage loan originator and provisions that exempt a mortgage loan originator from regulation. This bill eliminates exceptions to the definition of mortgage loan originator and recreates them as licensing exemptions. The bill also modifies certain of these exemptions and creates new ones, including for certain employees of a government agency, housing finance agency, or bona fide nonprofit organization. Also under the bill, an individual must be licensed as a mortgage loan originator only if the individual regularly engages in business as a mortgage loan originator, with the term "regularly engage" defined in the bill.

The bill recreates the definition of mortgage broker to mean a person who, for compensation or gain or in the expectation of compensation or gain, does any of the following but does not make an underwriting decision or close a loan: 1) assists a person in obtaining or applying to obtain a loan; 2) holds oneself out as being able to

BILL

assist a person in obtaining or applying to obtain a loan; or 3) engages in table funding. Current law provisions that are exceptions to the definition of mortgage broker and mortgage banker are recreated in the bill as exemptions from regulation and the bill also creates new exemptions, including for a government agency, housing finance agency, or bona fide nonprofit organization or a mortgage banker with limited transactions each year.

Under current law, DFI may not issue a mortgage loan originator license to an applicant with an unpardoned felony conviction within seven years prior to the application or, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering, at any time.

Under this bill, DFI may consider a pardoned or expunged felony conviction and a pardoned or expunged felony conviction does not automatically disqualify an individual from being issued a mortgage loan originator license.

Under current law, an applicant for a mortgage loan originator license must include in the application the name of the mortgage banker or mortgage broker who will employ the applicant as a mortgage loan originator. A mortgage loan originator may act on behalf of only the mortgage banker or mortgage broker with which that mortgage loan originator's license is associated in DFI's records, and a mortgage loan originator's license may be associated with only one mortgage banker or mortgage broker at a time. This mortgage banker or mortgage broker is responsible for, and must supervise the acts of, the mortgage loan originator with whom it is associated.

This bill allows a licensed mortgage loan originator to associate with (be sponsored by) a depository institution, rather than a mortgage banker or mortgage broker, if the depository institution first registers with DFI. If the depository institution applies to DFI and meets certain requirements, DFI must register the depository institution as a "registered entity" and the depository institution may then sponsor licensed mortgage loan originators under the depository institution's supervision and control. The provisions of current law, discussed above, relating to the relationship between a mortgage banker or mortgage broker and a licensed mortgage loan originator also apply with respect to a registered entity that sponsors a mortgage loan originator. A registered entity must also submit reports of condition to the NMLSR and cooperate with, and provide access to records and documents required by, DFI to carry out examinations of licensed mortgage loan originators sponsored by the registered entity. Certain acts or practices that are prohibited by a mortgage banker or mortgage broker with respect to a mortgage loan originator are also prohibited by a registered entity.

Current law requires each mortgage banker, mortgage broker, and mortgage loan originator to annually submit to the NMLSR a report of condition containing information required by the NMLSR. In addition, 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).

BILL

In addition to requiring registered entities to submit to the NMLSR reports of condition, this bill eliminates the requirement that reports of condition be submitted to the NMLSR annually, leaving unspecified the frequency of submissions. The bill also eliminates the annual audit requirement for mortgage brokers. Under the bill, a mortgage broker must instead annually submit reviewed financial statements for the mortgage broker's operations during the prior fiscal year. The reviewed financial statements must include certain materials, including a written statement by an independent CPA attesting that he or she conducted his or her review in accordance with GAAP.

The bill also specifies that principal offices and branch offices of mortgage bankers and mortgage brokers must be located in this state or another state and that a branch office, but not a principal office, may be located in a residence. A mortgage loan originator must be assigned to and work out of a licensed or registered office or branch office of the sponsoring mortgage banker, mortgage broker, or registered entity and the office must be the mortgage loan originator's residence or within 100 miles of this residence. There must be at least one licensed mortgage loan originator assigned to and working out of each branch office of a mortgage broker or of a mortgage banker or registered entity where loans are originated.

The bill also prohibits a mortgage banker, mortgage broker, or mortgage loan originator from using any solicitation or advertisement that: 1) misrepresents that the provider is, or is affiliated with, any governmental entity or other organization; 2) misrepresents that the product is or relates to a government benefit, or is endorsed, sponsored by, or affiliated with any government or government-related program; or 3) does not clearly and conspicuously identify the name of the mortgage broker or mortgage banker or, if a mortgage loan originator is sponsored by a registered entity, the registered entity. The bill also repeals a provision prohibiting an individual engaging solely in loan processor or underwriter activities from representing to the public that the individual can or will perform the activities of a mortgage loan originator.

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.** 224.71 (1br) of the statutes is created to read:
2 224.71 (1br) "Bona fide nonprofit organization" means an organization that is
3 described in section 501 (c) (3) of the Internal Revenue Code and exempt from federal
4 income tax under section 501 (a) of the Internal Revenue Code, that is certified by

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1 the federal department of housing and urban development or the Wisconsin Housing
2 and Economic Development Authority, and that does all of the following:

3 (a) Promotes affordable housing or provides home ownership education or
4 similar services.

5 (b) Conducts its activities in a manner that serves public or charitable
6 purposes.

7 (c) Receives funding and revenue and charges fees in a manner that does not
8 create an incentive for itself or its employees to act other than in the best interests
9 of its clients.

10 (d) Compensates its employees in a manner that does not create an incentive
11 for its employees to act other than in the best interests of its clients.

12 (e) Provides to, or identifies for, the borrower residential mortgage loans with
13 terms favorable to the borrower and comparable to residential mortgage loans and
14 housing assistance provided under government housing assistance programs.

15 **SECTION 2.** 224.71 (1c) of the statutes is amended to read:

16 224.71 (1c) "Branch office" means an office or place of business, other than the
17 principal office, located in this state or another state, where a mortgage loan
18 originator, mortgage banker, or mortgage broker ~~conducts business with residents~~
19 of this state engages in the mortgage loan business subject to this subchapter.

20 **SECTION 3.** 224.71 (1f) of the statutes is amended to read:

21 224.71 (1f) "Dwelling" has the meaning given in 15 USC 1602 (v) (w).

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

23 224.71 (1g) "Employee" means an individual whose manner and means of
24 performance of work are subject to the right of control of, or are controlled by, a

BILL**SECTION 4**

1 person, and whose compensation for federal income tax purposes is reported, or
2 required to be reported, on a W-2 form issued by the controlling person.

3 **SECTION 5.** 224.71 (1gh) of the statutes is created to read:

4 224.71 (1gh) (a) Except as provided in par. (b), “expungement” means to have
5 stricken or obliterated from a record of criminal conviction all references to the
6 defendant’s name and identity.

7 (b) For a criminal conviction entered in another state, “expungement” has the
8 meaning given under the laws of the state where the criminal conviction is entered.

9 **SECTION 6.** 224.71 (1h) of the statutes is amended to read:

10 224.71 (1h) “Federal banking agency” means the board of governors of the
11 federal reserve system, the U.S. office of the comptroller of the currency, ~~the U.S.~~
12 ~~office of thrift supervision~~, the national credit union administration, or the federal
13 deposit insurance corporation.

14 **SECTION 7.** 224.71 (1r) of the statutes is created to read:

15 224.71 (1r) “Housing finance agency” means any authority that is all of the
16 following:

17 (a) Chartered by a state to help meet the affordable housing needs of the
18 residents of the state.

19 (b) Supervised directly or indirectly by the state government.

20 (c) Subject to audit and review by the state in which it operates.

21 **SECTION 8.** 224.71 (2) (intro.) of the statutes is amended to read:

22 224.71 (2) (intro.) “Loan processor or underwriter” means an individual who,
23 as an employee, performs clerical or support duties at the direction of and subject to
24 the supervision and instruction of a mortgage loan originator licensed under s.
25 224.725 or exempt from licensing under s. ~~224.726(1)~~ 224.725 (1m), which clerical

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1 or support duties may include any of the following occurring subsequent to the
2 receipt of a residential mortgage loan application:

3 **SECTION 9.** 224.71 (3) (a) (intro.), 1., 2. and 3. of the statutes are renumbered
4 224.71 (3) (intro.), (c), (d) and (e), and 224.71 (3) (intro.), as renumbered, is amended
5 to read:

6 224.71 (3) (intro.) “Mortgage banker” means a person who is not excluded by
7 ~~par. (b) and~~ who does any of the following:

8 **SECTION 10.** 224.71 (3) (b) (intro.) and 7. of the statutes are repealed.

9 **SECTION 11.** 224.71 (3) (b) 8. of the statutes is renumbered 224.72 (1r) (a).

10 **SECTION 12.** 224.71 (3) (b) 9. of the statutes is renumbered 224.72 (1r) (b).

11 **SECTION 13.** 224.71 (3) (b) 10. of the statutes is renumbered 224.72 (1r) (d).

12 **SECTION 14.** 224.71 (3) (b) 11. of the statutes is renumbered 224.72 (1r) (g).

13 **SECTION 15.** 224.71 (3) (b) 12. of the statutes is renumbered 224.72 (1r) (h).

14 **SECTION 16.** 224.71 (4) of the statutes is repealed and recreated to read:

15 224.71 (4) “Mortgage broker” means a person who, for compensation or gain
16 or in the expectation of compensation or gain, does any of the following but does not
17 make an underwriting decision or close a residential mortgage loan:

18 (a) Assists a person in obtaining or applying to obtain a residential mortgage
19 loan.

20 (b) Holds himself, herself, or itself out as being able to assist a person in
21 obtaining or applying to obtain a residential mortgage loan.

22 (c) Engages in table funding.

23 **SECTION 17.** 224.71 (6) (a) (intro.), 1. and 2. of the statutes are renumbered
24 224.71 (6) (intro.), (c) and (d) (intro.), and 224.71 (6) (intro.) and (d) (intro.), as
25 renumbered, are amended to read:

BILL**SECTION 17**

1 224.71 (6) (intro.) “Mortgage loan originator” means an individual ~~who is not~~
2 ~~excluded by par. (b) and~~ who, for compensation or gain or in the expectation of
3 compensation or gain, does any of the following:

4 (d) (intro.) Offers or negotiates terms of a residential mortgage loan. For
5 purposes of this paragraph, an individual offers or negotiates terms of a residential
6 mortgage loan if the individual does any of the following:

7 **SECTION 18.** 224.71 (6) (b) (intro.) and 4. of the statutes are repealed.

8 **SECTION 19.** 224.71 (6) (b) 1. of the statutes is renumbered 224.725 (1m) (c) and
9 amended to read:

10 224.725 (1m) (c) An individual engaged solely as a loan processor or
11 underwriter, unless the individual is an independent contractor or represents to the
12 public, through advertising or another means of communication such as the use of
13 business cards, stationery, brochures, signs, rate lists, or other promotional items,
14 that the individual can or will perform any of the activities of a mortgage loan
15 originator.

16 **SECTION 20.** 224.71 (6) (b) 2. of the statutes is renumbered 224.725 (1m) (d).

17 **SECTION 21.** 224.71 (6) (b) 3. of the statutes is renumbered 224.725 (1m) (e).

18 **SECTION 22.** 224.71 (6) (d) 1., 2. and 3. of the statutes are created to read:

19 224.71 (6) (d) 1. Discusses, explains, or presents for consideration by a
20 borrower or prospective borrower particular residential mortgage loan terms.

21 2. Communicates directly or indirectly with a borrower or prospective borrower
22 for the purpose of reaching a mutual understanding about prospective residential
23 mortgage loan terms.

24 3. Recommends, or refers a borrower or prospective borrower to, a particular
25 lender or recommends a set of residential mortgage loan terms.

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1 **SECTION 23.** 224.71 (7) of the statutes is amended to read:

2 224.71 (7) “Nationwide mortgage licensing system and registry” means the
3 licensing and registration system developed and maintained by the Conference of
4 State Bank Supervisors and the American Association of Residential Mortgage
5 Regulators for licensed mortgage loan originators and mortgage loan originators
6 exempt from licensing under s. ~~224.726 (1)~~ 224.725 (1m) or, if this system is no longer
7 maintained, any system established by the secretary of the federal department of
8 housing and urban development under P.L. 110–289, Title V, section 1509.

9 **SECTION 24.** 224.71 (8) of the statutes is repealed.

10 **SECTION 25.** 224.71 (13) (c) of the statutes is amended to read:

11 224.71 (13) (c) Negotiating, on behalf of any party, any portion of a contract
12 relating to the sale, purchase, lease, rental, or exchange of real property, other than
13 in connection with providing financing for the transaction. For purposes of this
14 paragraph, providing financing for the transaction does not include use by a licensee
15 under s. 452.03 of forms approved under s. REEB 16.03, Wis. Adm. Code.

16 **SECTION 26.** 224.71 (13c) of the statutes is created to read:

17 224.71 (13c) “Registered entity” means a depository institution that
18 voluntarily registers with the division for the purpose of sponsoring licensed
19 mortgage loan originators that are under the depository institution’s direct
20 supervision and control.

21 **SECTION 27.** 224.71 (13g) (intro.) of the statutes is created to read:

22 224.71 (13g) “Registered mortgage loan originator” means any individual who
23 is all of the following:

24 **SECTION 28.** 224.71 (13m) of the statutes is created to read:

BILL**SECTION 28**

1 224.71 (13m) “Regularly engage,” with respect to an individual, means that
2 any of the following applies:

3 (a) The individual engaged in the business of a mortgage loan originator on
4 more than 5 residential mortgage loans, in this state or another state, in the previous
5 calendar year or expects to engage in the business of a mortgage loan originator on
6 more than 5 residential mortgage loans, in this state or another state, in the current
7 calendar year.

8 (b) The individual is acting on behalf of a person who is, or is required to be,
9 licensed as a mortgage lender, mortgage banker, or mortgage broker in this state or
10 another state.

11 (c) The individual is acting on behalf of a registered entity.

12 **SECTION 29.** 224.72 (1m) of the statutes is amended to read:

13 224.72 (1m) LICENSE REQUIRED. ~~A~~ Except as provided in sub. (1r), a person may
14 not conduct business or act as a mortgage banker or mortgage broker, use the title
15 “mortgage banker” or “mortgage broker,” or advertise or otherwise portray himself,
16 herself, or itself as a mortgage banker or mortgage broker, unless the person has been
17 issued a mortgage banker or mortgage broker license by the division.

18 **SECTION 30.** 224.72 (1r) (intro.), (c), (e) and (f) of the statutes are created to read:

19 224.72 (1r) LICENSE EXEMPTIONS. (intro.) The following persons shall not be
20 required to be licensed under this section or comply with the other provisions of this
21 subchapter:

22 (c) A federal, state, or local government agency or housing finance agency.

23 (e) A bona fide nonprofit organization that does not operate in a commercial
24 context and that is exempt under this paragraph. To qualify for an exemption under
25 this paragraph, an organization shall certify, on a form prescribed by the division,

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1 that it is a bona fide nonprofit organization and shall provide documentation as
2 required by the division. To maintain this exemption, the organization shall file the
3 prescribed certification and accompanying documentation with the division by
4 December 31 of each year.

5 (f) A mortgage banker that meets all of the following criteria:

6 1. The mortgage banker engaged in the business of a mortgage banker on 5 or
7 fewer residential mortgage loans during the previous calendar year.

8 2. The mortgage banker expects to serve as the prospective source of financing,
9 or to perform other phases of origination or servicing, on 5 or fewer residential
10 mortgage loans in the current calendar year.

11 3. The mortgage banker does not advertise or otherwise hold himself, herself,
12 or itself out as a “mortgage banker.”

13 **SECTION 31.** 224.72 (2) (c) 2. of the statutes, as affected by 2013 Wisconsin Act
14 36, is amended to read:

15 224.72 (2) (c) 2. The ~~department~~ division may not disclose any information
16 received under subd. 1. to any person except as follows:

17 a. The ~~department~~ division may disclose information under subd. 1. to the
18 department of revenue for the sole purpose of requesting certifications under s.
19 73.0301 and to the department of workforce development for the sole purpose of
20 requesting certifications under s. 108.227.

21 b. The ~~department~~ division may disclose information under subd. 1. a. to the
22 department of children and families in accordance with a memorandum of
23 understanding under s. 49.857.

24 **SECTION 32.** 224.72 (2m) of the statutes is renumbered 224.72 (2m) (a).

25 **SECTION 33.** 224.72 (2m) (b) and (c) of the statutes are created to read:

BILL**SECTION 33**

1 224.72 (2m) (b) A principal office of a mortgage banker or mortgage broker
2 shall be located in either this state or another state. A principal office may not be
3 located in a residence.

4 (c) A branch office of a mortgage banker or mortgage broker shall be located in
5 either this state or another state. A branch office may be located in a residence.

6 **SECTION 34.** 224.72 (4) (a) 2. of the statutes is amended to read:

7 224.72 (4) (a) 2. File with the division a commercial surety bond which is in the
8 amount of \$300,000 for a mortgage banker or \$120,000 for a mortgage broker, is
9 issued by a surety company authorized to do business in this state, secures the
10 applicant's faithful performance of all duties and obligations of a mortgage banker
11 or mortgage broker, is payable to the division for the benefit of persons to whom the
12 mortgage banker or mortgage broker provided services as a mortgage banker or
13 mortgage broker, is issued on a form that is acceptable to the division and provides
14 that the bond may not be terminated without at least ~~30~~ 60 days' written notice to
15 the division.

16 **SECTION 35.** 224.72 (4n) of the statutes is repealed.

17 **SECTION 36.** 224.722 of the statutes is created to read:

18 **224.722 Registered entities.** (1) A depository institution may apply for
19 registered entity status with the division. The application shall be on forms and in
20 the manner prescribed by the division and the applicant shall pay the fee specified
21 by the division. The application shall be accompanied by a commercial surety bond
22 in the amount of \$300,000 that is issued by a surety company authorized to do
23 business in this state and is written on a form that is acceptable to the division.

24 (2) Upon the filing of an application for registered entity status and the
25 payment of the required fee, the division shall make an investigation of the

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1 applicant. If the application is complete, and the division has no concerns regarding
2 the applicant's character, general fitness, or financial responsibility, the division
3 shall register the applicant as a registered entity.

4 (3) Each registered entity shall obtain and maintain a license for each branch
5 office where a mortgage loan originator sponsored by the registered entity engages
6 in business as a mortgage loan originator.

7 (5) A depository institution's registered entity status expires on December 31
8 of each year.

9 (6) A registered entity may apply to renew its registered entity status by timely
10 submitting, on forms and in the manner prescribed by the division, a completed
11 renewal application and all required renewal fees. The division may not renew
12 registered entity status under this section unless the division finds that the
13 registered entity continues to meet the minimum standards for registration under
14 this section.

15 (7) If a registered entity fails to satisfy the minimum standards for renewal of
16 its registration, its registration shall expire.

17 (8) A registered entity shall cooperate with, and provide access to records and
18 documents required by, the division to carry out examinations in accordance with s.
19 224.74 (2) of mortgage loan originators that are sponsored by the registered entity.

20 **SECTION 37.** 224.725 (1) of the statutes is amended to read:

21 224.725 (1) LICENSE REQUIRED. Except as provided in s. ~~224.726~~ sub. (1m), an
22 individual may not regularly engage in the business of a mortgage loan originator
23 with respect to a residential mortgage loan, or use the title "mortgage loan
24 originator," advertise, or otherwise portray himself or herself as a mortgage loan
25 originator in this state, unless the individual has been issued by the division, and

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1 thereafter maintains, a license under this section. Each licensed mortgage loan
2 originator shall register with, and maintain a valid unique identifier issued by, the
3 nationwide mortgage licensing system and registry.

4 **SECTION 38.** 224.725 (1m) (intro.), (a), (b), (f) and (g) 1., 2. and 3. of the statutes
5 are created to read:

6 224.725 (1m) LICENSE EXEMPTIONS. (intro.) The following individuals are not
7 required to be licensed under this section:

8 (a) A registered mortgage loan originator.

9 (b) An employee of a federal, state, or local government agency or housing
10 finance agency who acts as a mortgage loan originator only pursuant to his or her
11 official duties as an employee of the federal, state, or local government agency or
12 housing finance agency.

13 (f) An employee of a bona fide nonprofit organization who acts as a mortgage
14 loan originator only in connection with his or her work duties to the bona fide
15 nonprofit organization and only with respect to residential mortgage loans with
16 terms that are favorable to the borrower.

17 (g) 1. These activities are considered by the Wisconsin Supreme Court to be part
18 of the authorized practice of law within Wisconsin.

19 2. These activities are carried out within an attorney-client relationship.

20 3. The attorney carries out the activities in compliance with all applicable laws,
21 rules, and ethics standards.

22 **SECTION 39.** 224.725 (2) (d) of the statutes is repealed.

23 **SECTION 40.** 224.725 (3) (b) of the statutes is amended to read:

24 224.725 (3) (b) The applicant has not been convicted of, or pled guilty or no
25 contest to, a felony in a domestic, foreign, or military court during the 7-year period

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1 preceding the date of the application or, for a felony involving an act of fraud,
2 dishonesty, breach of trust, or money laundering, at any time preceding the date of
3 the application. ~~This paragraph does not apply with~~ With respect to any conviction
4 for which the applicant has received a pardon or expungement of the conviction, the
5 pardoned or expunged conviction shall not result in an automatic denial or
6 revocation of a mortgage loan originator license. The division may consider the
7 underlying crime, facts, or circumstances of a pardoned or expunged felony
8 conviction when determining the eligibility of an applicant for licensure under this
9 paragraph and par. (c).

10 **SECTION 41.** 224.725 (4) (a) of the statutes is amended to read:

11 224.725 (4) (a) Each mortgage loan originator shall be covered by a surety bond
12 in accordance with this subsection. A surety bond of a mortgage banker ~~or,~~ mortgage
13 broker, or registered entity meeting the requirements of par. (b) and s. 224.72 (4) (a)
14 2. or 224.722 (1) may satisfy the requirement under this paragraph for a mortgage
15 loan originator who, ~~under sub. (2) (d), identifies himself or herself as employed is~~
16 sponsored by the mortgage banker ~~or,~~ mortgage broker, or registered entity.

17 **SECTION 42.** 224.726 (intro.), (1) (intro.), (2) and (3) of the statutes are repealed.

18 **SECTION 43.** 224.726 (1) (a) and (b) of the statutes are renumbered 224.71 (13g)
19 (a) and (b).

20 **SECTION 44.** 224.726 (4) of the statutes is renumbered 224.725 (1m) (g) (intro.)
21 and amended to read:

22 224.725 (1m) (g) (intro.) A licensed attorney who ~~negotiates the terms of a~~
23 ~~residential mortgage loan on behalf of a client as an ancillary matter to the attorney's~~
24 ~~representation of the client, unless the attorney is compensated by a lender,~~
25 ~~mortgage broker, or mortgage loan originator or by any agent of a lender, mortgage~~

BILL**SECTION 44**

1 ~~broker, or mortgage loan originator, undertakes activities described in s. 224.71 (6)~~
2 if all of the following apply:

3 **SECTION 45.** 224.73 (title) of the statutes is amended to read:

4 **224.73 (title) Relationship between mortgage loan originator and**
5 **either a mortgage banker or a, mortgage broker, or registered entity;**
6 **branch offices.**

7 **SECTION 46.** 224.73 (1) of the statutes is amended to read:

8 224.73 (1) RESPONSIBILITY FOR MORTGAGE LOAN ORIGINATOR. A mortgage banker
9 ~~or, mortgage broker, or registered entity~~ is responsible for, and shall supervise the
10 acts of, a mortgage loan originator or any other person who otherwise acts on behalf
11 of the mortgage banker ~~or, mortgage broker, or registered entity.~~

12 **SECTION 47.** 224.73 (2) of the statutes is amended to read:

13 224.73 (2) RESTRICTION ON MORTGAGE LOAN ORIGINATOR. (a) If the division
14 suspends or revokes a mortgage banker's or mortgage broker's license or a registered
15 entity's registration, a mortgage loan originator may not act on behalf of that
16 mortgage banker ~~or, mortgage broker, or registered entity~~ during the period of
17 suspension or revocation.

18 (b) A mortgage loan originator may act on behalf of only the mortgage banker
19 ~~or, mortgage broker, or registered entity~~ with which that mortgage loan originator's
20 license is associated in the records of the division, ~~as designated under s. 224.725 (2)~~
21 (d). A mortgage loan originator's license may only be associated with one mortgage
22 banker ~~or, mortgage broker, or registered entity~~ at a time.

23 **SECTION 48.** 224.73 (3) of the statutes is amended to read:

24 224.73 (3) TRANSFER BY MORTGAGE LOAN ORIGINATOR. (a) A licensed mortgage
25 loan originator may apply, on forms and in the manner prescribed by the division,

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1 to transfer association to another licensed mortgage banker or mortgage broker or
2 a registered entity. The division shall promulgate rules establishing a fee for a
3 transfer application under this subsection.

4 (b) A mortgage loan originator may not act on behalf of a mortgage banker ~~or,~~
5 mortgage broker, or registered entity until the mortgage loan originator's license
6 association has been transferred to that mortgage banker ~~or,~~ mortgage broker, or
7 registered entity in the records of the division.

8 **SECTION 49.** 224.73 (4) (title) and (a) of the statutes are repealed.

9 **SECTION 50.** 224.73 (4) (b) of the statutes is renumbered 224.77 (1) (sn) and
10 amended to read:

11 224.77 (1) (sn) ~~Any person originating a residential mortgage loan shall~~ As a
12 mortgage banker, mortgage broker, or mortgage loan originator, fail to clearly place
13 ~~the person's~~ his, her, or its unique identifier on all residential mortgage loan
14 application forms, solicitations, and advertisements, including business cards ~~or~~
15 ~~Web, Internet sites, email signature blocks,~~ and on all other documents specified by
16 rule of the division.

17 **SECTION 51.** 224.73 (5) of the statutes is created to read:

18 224.73 (5) MORTGAGE LOAN ORIGINATORS AND BRANCH OFFICES. (a) A mortgage
19 loan originator shall be assigned to and work out of a licensed or registered office or
20 branch office of the sponsoring mortgage banker, mortgage broker, or registered
21 entity. This office shall either be the mortgage loan originator's residence or be
22 within 100 miles of the mortgage loan originator's residence.

23 (b) At each branch office of a mortgage banker or registered entity at which
24 residential mortgage loans are originated for the mortgage banker or registered
25 entity or for another person, and at each branch office of a mortgage broker, there

BILL**SECTION 51**

1 shall be at least one licensed mortgage loan originator assigned to and working out
2 of the office. If an individual is identified as a branch manager for the office, either
3 in the records of the division or in the records of the mortgage banker, mortgage
4 broker, or registered entity, the individual must be licensed as a mortgage loan
5 originator.

6 **SECTION 52.** 224.74 (title) of the statutes is amended to read:

7 **224.74 (title) Division's review of the operations of a mortgage loan**
8 **originator, mortgage broker, ~~or~~, mortgage banker, or registered entity.**

9 **SECTION 53.** 224.74 (1) (title) of the statutes is amended to read:

10 224.74 (1) (title) ~~ANNUAL-CALL~~ CALL REPORTS; AUDITS.

11 **SECTION 54.** 224.74 (1) (a) of the statutes is amended to read:

12 224.74 (1) (a) *Annual Mortgage call report*. ~~Each year, by the date and in the~~
13 ~~form required by the nationwide mortgage licensing system and registry, each~~
14 ~~mortgage banker, mortgage broker, and mortgage loan originator licensed under this~~
15 ~~subchapter, and each registered entity, shall submit to the nationwide mortgage~~
16 ~~licensing system and registry an annual report~~ reports of condition, which shall be
17 in such form and contain such information as the nationwide mortgage licensing
18 system and registry may require.

19 **SECTION 55.** 224.74 (1) (b) of the statutes is amended to read:

20 224.74 (1) (b) *Audit requirement for mortgage bankers*. Each year, no later than
21 6 months following the end of its most recently completed fiscal year, each mortgage
22 banker ~~or mortgage broker~~ shall submit a copy of an audit of the mortgage banker's
23 ~~or mortgage broker's~~ operations during that fiscal year. An audit under this
24 paragraph shall be conducted by an independent certified public accountant in
25 accordance with generally accepted auditing standards. The financial statements

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

3 **SECTION 56.** 224.74 (1) (bm) of the statutes is created to read:

4 224.74 (1) (bm) *Reviewed financial statements for mortgage brokers.* Each year,
5 no later than 6 months following the end of its most recently completed fiscal year,
6 each mortgage broker shall submit a copy of the mortgage broker's reviewed
7 financial statements for the mortgage broker's operations during that fiscal year.
8 The reviewed financial statements shall include a balance sheet, an income
9 statement, and a written statement by an independent certified public accountant
10 attesting that he or she has conducted his or her review in accordance with generally
11 accepted accounting principles and professional standards of the American Institute
12 of CPAs.

13 **SECTION 57.** 224.75 (2) of the statutes is amended to read:

14 224.75 (2) **PERIOD OF RECORD RETENTION.** A mortgage banker or mortgage broker
15 shall keep for at least 36 months, in an office of the mortgage banker or mortgage
16 broker licensed under this subchapter but one that is not located in a residence, all
17 books and records that, in the opinion of the division, will enable the division to
18 determine whether the mortgage banker or mortgage broker is in compliance with
19 the provisions of this subchapter. These books and records include copies of all
20 deposit receipts, canceled checks, trust account records, the records which a
21 mortgage banker or mortgage broker maintains under sub. (1) (c) or (d), and other
22 relevant documents or correspondence received or prepared by the mortgage banker
23 or mortgage broker in connection with a residential mortgage loan or residential
24 mortgage loan application. The retention period begins on the date the residential
25 mortgage loan is closed or, if the loan is not closed, the date of loan application. If

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1 the residential mortgage loan is serviced by a mortgage banker, the retention period
2 commences on the date that the loan is paid in full.

3 **SECTION 58.** 224.755 (4) (d) of the statutes is amended to read:

4 224.755 (4) (d) An individual may ~~retake~~ take a test 3 consecutive times, with
5 each ~~test retaken no less than~~ retest occurring at least 30 days after the preceding
6 test. If the individual fails 3 consecutive tests, the individual may not retake a test
7 again for at least 6 months.

8 **SECTION 59.** 224.755 (4) (e) of the statutes is amended to read:

9 224.755 (4) (e) If an individual previously licensed as a mortgage loan
10 originator fails to maintain a valid license for a period of 5 years or longer, not taking
11 into account any time during which the individual is a registered loan originator, the
12 individual shall retake the test under par. (a). ~~For purposes of determining the~~
13 ~~5-year period, the division shall not consider any period during which the individual~~
14 ~~is exempt from licensing under s. 224.726 (1).~~

15 **SECTION 60.** 224.77 (title) of the statutes is amended to read:

16 **224.77 (title) Prohibited acts and practices, and discipline, of mortgage**
17 **bankers, mortgage loan originators, and mortgage brokers, and registered**
18 **entities.**

19 **SECTION 61.** 224.77 (1) (intro.) of the statutes is amended to read:

20 224.77 (1) PROHIBITED ACTS AND PRACTICES. (intro.) No mortgage banker,
21 mortgage loan originator, ~~or~~ mortgage broker, or, with respect to pars. (f), (fg), (g),
22 (gd), and (gh), registered entity, and no member, officer, director, principal, partner,
23 trustee, or other agent of a mortgage banker ~~or~~, mortgage broker, or registered entity
24 may do any of the following:

25 **SECTION 62.** 224.77 (1) (f) of the statutes is amended to read:

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1 224.77 (1) (f) Accept a commission, money, or other thing of value for
2 performing an act as a mortgage loan originator unless the payment is from ~~a~~ the
3 mortgage banker ~~or~~, mortgage broker, or registered entity with whom the mortgage
4 loan originator's license is associated, as identified in the records of the division at
5 the time the act is performed.

6 **SECTION 63.** 224.77 (1) (fg) of the statutes is amended to read:

7 224.77 (1) (fg) As a mortgage banker ~~or~~, mortgage broker, or registered entity,
8 pay a commission, money, or other thing of value to any person for performing an act
9 as a mortgage loan originator unless the mortgage loan originator's license is
10 associated with the mortgage banker ~~or~~, mortgage broker, or registered entity in the
11 records of the division at the time the act is performed.

12 **SECTION 64.** 224.77 (1) (g) of the statutes is amended to read:

13 224.77 (1) (g) As a mortgage loan originator, represent or attempt to represent
14 a mortgage banker ~~or~~, mortgage broker, or registered entity other than the mortgage
15 banker ~~or~~, mortgage broker, or registered entity with whom the mortgage loan
16 originator's license was associated, as identified in the records of the division at the
17 time the representation or attempted representation occurs.

18 **SECTION 65.** 224.77 (1) (gd) of the statutes is amended to read:

19 224.77 (1) (gd) As a mortgage banker ~~or~~, mortgage broker, or registered entity,
20 permit a person who is not licensed under this subchapter to act as a mortgage loan
21 originator on behalf of the mortgage banker ~~or~~, mortgage broker, or registered entity.

22 **SECTION 66.** 224.77 (1) (gh) of the statutes is amended to read:

23 224.77 (1) (gh) As a mortgage banker ~~or~~, mortgage broker, or registered entity,
24 permit a person whose mortgage loan originator license is not associated in the
25 records of the division with the mortgage banker ~~or~~, mortgage broker, or registered

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1 entity to act as a mortgage loan originator on behalf of the mortgage banker or,
2 mortgage broker, or registered entity.

3 **SECTION 67.** 224.77 (1) (sm) and (sq) of the statutes are created to read:

4 224.77 (1) (sm) As a mortgage loan originator, fail to identify his or her name
5 and sign the mortgage loan application for a loan originated by him or her.

6 (sq) As a mortgage banker, mortgage broker, or mortgage loan originator, use
7 any solicitation or advertisement to which any of the following applies:

8 1. The solicitation or advertisement misrepresents that the provider is, or is
9 affiliated with, any governmental entity or other organization.

10 2. The solicitation or advertisement misrepresents that the product is or relates
11 to a government benefit, or is endorsed, sponsored by, or affiliated with any
12 government or government-related program, including through the use of formats,
13 symbols, or logos that resemble those of such entity, organization, or program.

14 3. The solicitation or advertisement does not clearly and conspicuously identify
15 the name of the mortgage broker or mortgage banker or, if a mortgage loan originator
16 is sponsored by a registered entity, the registered entity.

17 **SECTION 68.** 224.77 (2m) (a) 1. (intro.), a. and b. of the statutes are amended
18 to read:

19 224.77 (2m) (a) 1. (intro.) In addition to any other authority provided to the
20 division under this subchapter, if the division finds that a mortgage banker,
21 mortgage loan originator, or mortgage broker has violated any provision of this
22 subchapter or any rule promulgated by the division under this subchapter, or a
23 registered entity has violated any applicable provision of this subchapter, the
24 division may do any of the following:

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1 a. Deny any application for initial issuance or renewal of a license or
2 registration.

3 b. Revoke, suspend, limit, or condition any license of the mortgage banker,
4 mortgage loan originator, or mortgage broker or registration of the registered entity.

5 **SECTION 69.** 224.83 of the statutes is repealed.

6 **SECTION 70.** 943.80 (2) of the statutes is amended to read:

7 943.80 (2) "Financial institution" means a bank, as defined in s. 214.01 (1) (c),
8 a savings bank, as defined in s. 214.01 (1) (t), a savings and loan association, a trust
9 company, a credit union, as defined in s. 186.01 (2), a mortgage banker, as defined
10 in s. 224.71 (3) (a), or a mortgage broker, as defined in s. 224.71 (4) (a), whether
11 chartered under the laws of this state, another state or territory, or under the laws
12 of the United States; a company that controls, is controlled by, or is under common
13 control with a bank, a savings bank, a savings and loan association, a trust company,
14 a credit union, a mortgage banker, or a mortgage broker; or a person licensed under
15 s. 138.09, other than a person who agrees for a fee to hold a check for a period of time
16 before negotiating or presenting the check for payment and other than a pawnbroker,
17 as defined in s. 138.10 (1) (a).

18

(END)

Barman, Mike

From: LRB.Legal
To: Sen.Lasee
Subject: Draft review: LRB -4099/1 Topic: Changes relating to mortgage bankers, mortgage brokers, and mortgage loan originators
Attachments: 13-4099/1

State of Wisconsin - Legislative Reference Bureau
One East Main Street - Suite 200 - Madison

The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent. If you have any questions concerning the draft or would like to have it redrafted, please contact Aaron R. Gary, Senior Attorney, at (608) 261-6926, at aaron.gary@legis.wisconsin.gov, or at One East Main Street, Suite 200.

If you wish to introduce this draft in both houses please contact the drafting attorney to have a companion bill drafted.

Per instructions from the drafting attorney ... we will jacket this draft for the Senate and send it (by page) to your office this afternoon.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at LRB.Legal@legis.wisconsin.gov or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.