

2003 DRAFTING REQUEST

Bill

Received: **09/12/2003**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Phil Montgomery (608) 266-5840**

By/Representing: **rose**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - banking inst.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Montgomery@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

bank and credit union name protection

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>
/?	rmarchan 09/12/2003	kfollett 09/16/2003 kfollett 09/18/2003		_____			State
/1			rschluet 09/18/2003	_____	lnorthro 09/18/2003	sbasford 11/10/2003	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

sbasford
11/10/2003

FE Sent For:

*At
11/10/03*

<END>

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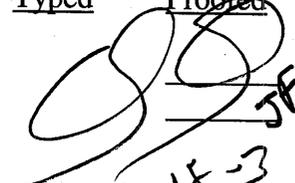
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1?	rmarchan	11 kjf 9/18					

9-18-03

FE Sent For:

<END>

Marchant, Robert

From: Smyrski, Rose
Sent: Thursday, September 11, 2003 11:12 AM
To: Marchant, Robert
Subject: RE: Follow-up on Bank Name Protection

It seems like ages ago that we talked about the bank name protection (which of course it was)

You hadn't started a draft yet on either the bank name protection or the fraternal change. Where we had left it was in my court and I needed to give you the go ahead on both drafting requests. If you would proceed on drafting for the bank name protection and include the credit unions in the draft. On the fraternal proposal--I forwarded comments by Pete Christianson--I am interested in your thoughts on his comments. Pending that we may or may not go forward on drafting a proposal.

That sounds like a plan for the predatory lending proposal. We can work off that language.

Thanks Rob

-----Original Message-----

From: Marchant, Robert
Sent: Thursday, September 11, 2003 10:10 AM
To: Smyrski, Rose
Subject: RE: Follow-up on Bank Name Protection

Rose--

You sure are busy! I have a couple of questions. What is the LRB # of the bank name protection draft? I have been unable to locate a draft under Montgomery's name and, truth be told, I don't recall how we left off on the request. Also, do we have an LRB # for the fraternal bill? I can't seem to find one and, again, I'm not sure how we left off on that request.

As for the predatory lending request, I think it would be most efficient for me to prep a preliminary draft for you, which we could then use as a basis for any necessary discussions to clarify intent.

Let me know what you think.

Rob

-----Original Message-----

From: Smyrski, Rose
Sent: Wednesday, September 10, 2003 5:03 PM
To: Marchant, Robert
Subject: Follow-up on Bank Name Protection

Rob,

I did a little more digging in my files and you did respond to me on their comments. If we could go forward with drafting that would be great.

FYI--We do want to include Credit unions in the proposal.

Thanks again

Rose

Marchant, Robert

From: Smyrski, Rose
Sent: Wednesday, September 10, 2003 5:03 PM
To: Marchant, Robert
Subject: Follow-up on Bank Name Protection

Rob,
I did a little more digging in my files and you did respond to me on their comments. If we could go forward with drafting that would be great.

FYI-We do want to include Credit unions in the proposal.

Thanks again

Rose

Marchant, Robert

From: Smyrski, Rose
Sent: Wednesday, September 10, 2003 4:39 PM
To: Marchant, Robert
Subject: follow-up on proposal

Rob,
Going over my outstanding pieces of legislation --one I put on the back burner is the Bank Name Protection proposal. If you would be so kind as to move forward on this and send us a draft at your earliest convenience, I'd really appreciate it.

Do you recall the meeting we had with Nick Zavos several questions were raised. They were forwarded and I believe I sent their replies to you. BUT in case I did ...below are their responses.

If you have any questions, please give me a call.
Thanks Rob

Rose



questions for the
Community Ba...



3-18-03 Bankers
reply to draft...

From: Smyrski, Rose
Sent: Thursday, March 13, 2003 2:37 PM
To: Klein, Jonathan
Subject: questions for the Community Bankers
Meeting with drafter, Rob Marchant, and Leg Council, Nick Zavos, to discuss the Name Protection proposal.

Several questions arose that will need addressing by Community Bankers.

- 1.) How are these companies currently getting the information? Are they affiliates?
- 2.) Wouldn't this issue be covered under the Unfair & Deceptive Trade Practices in DATCP? Wouldn't this fit better under statutes 100.18
- 3.) Is this covered under the federal LANAHAM Act?
- 4.) What to do if the entities they are trying to stop are not subject to DFI's jurisdiction?
- 5.) Is this for marketing material only?
- 6.) what is the scope of the legislation-telemarketing and/or written material?
- 7.) What if the marketers use the terms "relationship" verses "endorsement" Must be careful of 1st Amendment issue-
- 8.) Do we include Credit unions, other Financial Institutions?
- 9.) What chapters should be covered in this legislation or should it all be under DATCP (chapter 100)



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MILWAUKEE
APPLETON
GREEN BAY
WAUKESHA

LAFOLLETTE GODFREY & KAHN
MADISON

MEMORANDUM

TO: Daryll Lund
FROM: Jim Sheriff
DATE: March 18, 2003
RE: Questions on Bank Name Protection Legislation

This addresses various questions that have been asked by drafters at the Legislative Reference Bureau about CBW's bank name protection proposal.

1. **How are these companies currently getting the information? Could some be affiliates?**

The marketing companies obtain information about bank customers' recent home mortgage financings and automobile loans by purchasing lien recording information, often available on compact discs, from state and local county sources. For example, information about recent automobile lien filings can be obtained by anyone through the Wisconsin Department of Transportation or the Division of Motor Vehicles. Information about home mortgage financings can be obtained from local county Registers of Deeds.

It is very unlikely that any financial institution affiliates would obtain information in this way, since it would be both costly and inefficient. Financial institutions currently can and do share this information with their affiliates, unless the customer has specifically opted-out of affiliate information sharing.

Note that the proposed legislation would not, in any event, apply to marketing materials or solicitations sent by a bank's affiliates or agents, or to any other solicitations where the bank has given its consent.

2. **Wouldn't this issue be covered under the Unfair & Deceptive Trade Practices in DATCP? Wouldn't this fit better under Wis. Stats. §100.18?**

We do not believe the issues that arise from a marketing company's deceptive and misleading use of a bank's name in marketing materials are adequately addressed by Wisconsin's UDAP provision at Wis. Stats. §100.18, and accordingly we believe that this proposed legislation should be included as part of the banking laws of Wisconsin. (See answer to #9 below.)

First, regarding the language of §100.18, the statute includes a very significant exception which would preclude coverage in the vast majority of cases where the deceptive and misleading use of a bank's name now occurs. Specifically, Wis. Stats. §100.18(12)(a) states that "this section does not apply to the insurance business." However, most of the companies that are intentionally misrepresenting their relationship with a Wisconsin bank in solicitations and advertisements sent to consumers are, in fact, insurance companies or other insurance intermediaries. The goal of the solicitation often is to sell the homeowner or new car owner some additional credit insurance or extended warranty coverage, which is clearly part of "the insurance business."

Second, bank names in general, and the use or misuse by others of such names, historically have been addressed by Wisconsin's legislature by adopting appropriate provisions in the banking and savings bank statutes. See, for example, Wis. Stats. §§221.0401-221.0403 (commercial banks); and Wis. Stats. §214.035 (savings banks). These statutes recognize the importance from a consumer information and from an industry safety and soundness perspective of placing authority and controls over the use of a bank's name with the principal state banking regulator – the Wisconsin Department of Financial Institutions ("DFI").

Other states such as Illinois that recently considered and adopted (in 2001) substantially equivalent bank name protection statutes such as that CBW has proposed, also (a) had equivalent UDAP statutes to Wisconsin's in place at the time the new law was enacted, and (b) elected to place this new "bank name" protection in its banking statutes, with enforcement authority given to the banking regulator, not to the Attorney General or other state regulator already empowered to enforce the UDAP laws.

Also, Wis. Stats. §100.18(1) is not as broad in its coverage as the statute proposed. As a result, it is unclear that Wis. Stats. §100.18(1) would even be violated by the marketing practices now employed by companies that want their solicitations when received to be viewed misleadingly by prospects as having been sent by their bank or a company affiliated with their bank.

Specifically, Wisconsin's UDAP statute requires for a violation that an "advertisement, announcement, statement or representation contain any assertion, representation or statement of fact which is untrue, deceptive or misleading." (Wis. Stats. §100.18(1).) Our proposed legislation would make a company liable for sending marketing material (without the bank's consent) that a reasonable person would believe "originated from or is endorsed by the existing bank, or that the existing bank is in any way responsible for the marketing material or

solicitation.” It is not at all clear that this conduct also would be considered a violation of §100.18(1).

The legislative standard proposed by CBW recognizes the increasing importance which the privacy of customer financial information has on this issue, and how critical it is for community banks to continue to maintain the trust and confidence of their customers when it comes to the confidentiality and privacy of their customers’ financing arrangements and other similar information. Basically, bank customers who have received the types of written solicitations this legislation proposes to make unlawful are led to believe (incorrectly) that their bank has shared or provided this sensitive financial information about them – such as the amount and date of their new mortgage – to an unrelated third party. Consumers are quite understandably upset about this and often complain directly and bitterly to their bank, or to banking regulators, about this unauthorized sharing of personal financial information. Of course, the answer is that their bank had nothing at all to do with the solicitation, shared no customer financial information at all with the marketer, and typically is unaware even of who the marketing firm is that has contacted its customers.

Nonetheless, when the marketing solicitation envelope appears in your mail at home with the window envelope showing your name together with the name of your bank you just refinanced through, you reasonably will think that your bank was involved somehow in the solicitation and the information included in the mailing.

3. Is this activity covered under the Federal Lanham Act?

Please see attached February 11, 2003 memorandum from Godfrey & Kahn on this subject. Briefly, the memorandum’s conclusion is that the deceptive or misleading use of a bank’s name may be a violation of the Lanham Act, but that enforcement time and costs would be so substantial for a bank that it would be unlikely to take steps to enforce its rights.

4. What to do if the entities they are trying to stop are not subject to DFI’s jurisdiction?

It is unlikely that any of the marketing companies DFI would take enforcement actions and impose civil penalties against technically would be subject to DFI’s regulatory jurisdiction over financial institutions, finance companies and mortgage banks.

We would expect that, like is true at present, if DFI imposes a monetary penalty or seeks to take other enforcement actions as permitted by Chapters 220 or 221, DFI can avail itself of the Attorney General’s Office to assist in enforcement of Wisconsin’s law.

5. Is this for marketing material only?

Yes, this statute is only intended to address the misleading or deceptive use of a bank’s name in connection with a third party’s solicitation or marketing materials provided to a bank’s customers.

6. **What is the scope of the legislation – telemarketing and/or written material?**

The legislation is intended to prohibit the misleading use of a bank's name by a company when marketing to or soliciting business from customers of that bank, regardless of the medium by which the marketing material or solicitation is transmitted. Thus, a telemarketing call whose script causes the listener to reasonably and mistakenly believe that the solicitation is endorsed by his or her bank, would be a violation just as would a written solicitation sent to the customer's home, as would be an internet-based solicitation to the customer.

7. **What if the marketers use the term "relationship" versus "endorsement"?**

I'm not sure I understand this question. Even if a marketing solicitation, for example, offers to sell credit disability insurance, the solicitation could violate the new law regardless of whether it includes anything directly about an "endorsement" from the bank, or describes anything about the company's "relationship" with the bank. Even if silent on both these points, the written solicitation would still violate the new law if a reasonable person would mistakenly believe that the solicitation he received originated from his bank. This is often the case, for example, when the marketing firm intentionally mails its solicitation using a window envelope opening that prominently shows the customer's name and bank name together in the opening. This is a concrete example of a company's deceptive or misleading use of a bank's name to cause the recipient to reasonably but mistakenly believe that it originated from or is endorsed by his bank.

8. **Do we include credit unions, other financial institutions?**

We believe that Wisconsin's state chartered commercial banks, savings banks, savings and loan associations and credit unions all should be protected equally by this legislation. All of these financial institutions are at similar risk of third party marketing schemes designed to make their customers mistakenly believe that their financial institutions are sharing sensitive personal financial information with the third party, or is endorsing the marketer's products and services.

9. **What chapters should be covered in this legislation or should it all be under DATCP (chapter 100)?**

For the reasons stated above we do not think these name protections should be included in Chapter 100 or enforced by DATCP at all. We believe that, like was done in Illinois, these name protection statutes should be included in the relevant financial institutions' codes, and placed under the enforcement authority of the financial institution's appropriate regulatory agency – namely, the Division of Banking and the Office of Credit Unions at DFI.

We believe this legislation should be added to Chapters 221 (banks); 215 (savings and loans); 214 (savings banks), and 186 (credit unions).

**Proposed Additions to Wisconsin Statutes to Prohibit
Deceptive or Misleading Use of Commercial Bank, Savings Bank
and Savings and Loan Association Names**

March 18, 2003

1. **Commercial Banks**

Wis. Stats. §221.0404 Deceptive or misleading use of bank names prohibited.

- (1) IN GENERAL. No person may use the name of an existing bank, or a name deceptively similar to that of an existing bank, when marketing or soliciting business from customers or prospective customers in such a manner that could cause a reasonable person to believe that the marketing material or solicitation originated from or is endorsed by the existing bank, or that the existing bank is in any other way responsible for the marketing material or solicitation, unless the person has first obtained the consent of the existing bank or as provided in sub. (3).
- (2) REMEDIES. An existing bank may, in addition to any other remedies available under the law, report an alleged violation of this section to the division. If the division finds the marketing material or solicitation in question to be in violation of this section, the division shall direct the person to cease and desist from using that marketing material or solicitation in Wisconsin. If that person persists in the use of the marketing material or solicitation, then the division may impose a civil penalty of up to \$1,000 for each violation. Each instance in which the marketing material or solicitation is sent to a customer or prospective customer shall constitute a separate violation of these provisions.
- (3) EXCEPTIONS. Nothing in this section prohibits the use of or reference to the name of an existing bank in marketing materials or solicitations in any of the following circumstances:
 - (a) by the existing bank, its parent or any of its subsidiaries, agents or affiliates; or
 - (b) provided that the use or reference would not deceive or confuse a reasonable person regarding whether the marketing material or solicitation originated from or was endorsed by the existing bank or whether the existing bank was in any other way responsible for the marketing material or solicitation.

* * * * *

2. **Savings Banks**

Wis. Stats. §214.035(4) Deceptive or misleading use of savings bank names prohibited.

- (a) IN GENERAL. No person may use the name of an existing savings bank, or a name deceptively similar to that of an existing savings bank, when marketing or soliciting business from customers in such a manner that could cause a reasonable person to believe that the marketing material or solicitation originated from or is endorsed by the existing savings bank, or that the existing savings bank is in any other way responsible for the marketing material or solicitation, unless the person has first obtained the consent of the existing bank or as provided in sub. (c).
- (b) REMEDIES. An existing savings bank may, in addition to any other remedies available under the law, report an alleged violation of this section to the division. If the division finds the marketing material or solicitation in question to be in violation of this section, the division shall direct the person to cease and desist from using that marketing material or solicitation in Wisconsin. If that person persists in the use of the marketing material or solicitation, then the division may impose a civil penalty of up to \$1,000 for each violation. Each instance in which the marketing material or solicitation is sent to a customer or prospective customer shall constitute a separate violation of these provisions.
- (c) EXCEPTIONS. Nothing in this section prohibits the use of or reference to the name of an existing savings bank in marketing materials or solicitations in any of the following circumstances:
 - 1. by the existing savings bank, its parent or any of its subsidiaries, agents or affiliates; or
 - 2. provided that the use or reference would not deceive or confuse a reasonable person regarding whether the marketing material or solicitation originated from or was endorsed by the existing savings bank or whether the existing savings bank was in any other way responsible for the marketing material or solicitation.

* * * * *

3. **Savings and Loan Associations**

Wis. Stats. §215.26(10) Deceptive or misleading use of association names prohibited.

- (a) IN GENERAL. No person may use the name of an existing association, or a name deceptively similar to that of an existing association, when marketing or soliciting business from customers or prospective customers in such a manner that could cause a reasonable person to believe that the marketing material or solicitation

originated from or is endorsed by the existing association, or that the existing association is in any other way responsible for the marketing material or solicitation, unless the person has first obtained the consent of the existing association or as provided in sub. (c).

- (b) **REMEDIES.** An existing association may, in addition to any other remedies available under the law, report an alleged violation of this section to the division. If the division finds the marketing material or solicitation in question to be in violation of this section, the division shall direct the person to cease and desist from using that marketing material or solicitation in Wisconsin. If that person persists in the use of the marketing material or solicitation, then the division may impose a civil penalty of up to \$1,000 for each violation. Each instance in which the marketing material or solicitation is sent to a customer or prospective customer shall constitute a separate violation of these provisions.
- (c) **EXCEPTIONS.** Nothing in this section prohibits the use of or reference to the name of an existing association in marketing materials or solicitations in any of the following circumstances:
1. by the existing association, its parent or any of its subsidiaries, agents or affiliates; or
 2. provided that the use or reference would not deceive or confuse a reasonable person regarding whether the marketing material or solicitation originated from or was endorsed by the existing association or whether the existing association was in any other way responsible for the marketing material or solicitation.

**Proposed Additions to Wisconsin Statutes to Prohibit
Deceptive or Misleading Use of Commercial Bank, Savings Bank
and Savings and Loan Association Names**

March 18, 2003

1. **Commercial Banks**

Wis. Stats. §221.0404 Deceptive or misleading use of bank names prohibited.

- (1) **IN GENERAL.** No person may use the name of an existing bank, ~~or a name~~ deceptively similar to that of an existing bank, when marketing or soliciting business from customers or prospective customers in such a manner that could cause a reasonable person to believe that the marketing material or solicitation originated from or is endorsed by the existing bank, or that the existing bank is in any other way responsible for the marketing material or solicitation ~~or a name~~ ~~deceptively similar to that of an existing bank,~~ unless the person has first obtained the consent of the existing bank or as provided in sub. (3).
- (2) **REMEDIES.** An existing bank may, in addition to any other remedies available under the law, report an alleged violation of this section to the division. If the division finds the marketing material or solicitation in question to be in violation of this section, the division shall direct the person to cease and desist from using that marketing material or solicitation in Wisconsin. If that person persists in the use of the marketing material or solicitation, then the division may impose a civil penalty of up to \$1,000 for each violation. Each instance in which the marketing material or solicitation is sent to a customer or prospective customer shall constitute a separate violation of these provisions.
- (3) **EXCEPTIONS.** Nothing in this section prohibits the use of or reference to the name of an existing bank in marketing materials or solicitations in any of the following circumstances:
- (a) by the existing bank, its parent or any of its subsidiaries, agents or affiliates;
or
 - (b) provided that the use or reference would not deceive or confuse a reasonable person regarding whether the marketing material or solicitation originated from or was endorsed by the existing bank or whether the existing bank was in any other way responsible for the marketing material or solicitation.

* * * * *

2. Savings Banks

Wis. Stats. §214.035(4) Deceptive or misleading use of savings bank names prohibited.

- (a) IN GENERAL. No person may use the name of an existing savings bank, or a name deceptively similar to that of an existing savings bank, when marketing or soliciting business from customers in such a manner that could cause a reasonable person to believe that the marketing material or solicitation originated from or is endorsed by the existing savings bank, or that the existing savings bank is in any other way responsible for the marketing material or solicitation ~~or a name deceptively similar to that of an existing savings bank~~, unless the person has first obtained the consent of the existing bank or as provided in sub. (c).
- (b) REMEDIES. An existing savings bank may, in addition to any other remedies available under the law, report an alleged violation of this section to the division. If the division finds the marketing material or solicitation in question to be in violation of this section, the division shall direct the person to cease and desist from using that marketing material or solicitation in Wisconsin. If that person persists in the use of the marketing material or solicitation, then the division may impose a civil penalty of up to \$1,000 for each violation. Each instance in which the marketing material or solicitation is sent to a customer or prospective customer shall constitute a separate violation of these provisions.
- (c) EXCEPTIONS. Nothing in this section prohibits the use of or reference to the name of an existing savings bank in marketing materials or solicitations in any of the following circumstances:
 - 1. by the existing savings bank, its parent or any of its subsidiaries, agents or affiliates; or
 - 2. provided that the use or reference would not deceive or confuse a reasonable person regarding whether the marketing material or solicitation originated from or was endorsed by the existing savings bank or whether the existing savings bank was in any other way responsible for the marketing material or solicitation.

* * * * *

3. Savings and Loan Associations

Wis. Stats. §215.26(10) Deceptive or misleading use of association names prohibited.

- (a) IN GENERAL. No person may use the name of an existing association, or a name deceptively similar to that of an existing association, when marketing or soliciting business from customers or prospective customers in such a manner

that could cause a reasonable person to believe that the marketing material or solicitation originated from or is endorsed by the existing association, or that the existing association is in any other way responsible for the marketing material or solicitation ~~or a name deceptively similar to that of an existing association~~, unless the person has first obtained the consent of the existing association or as provided in sub. (c).

- (b) **REMEDIES.** An existing association may, in addition to any other remedies available under the law, report an alleged violation of this section to the division. If the division finds the marketing material or solicitation in question to be in violation of this section, the division shall direct the person to cease and desist from using that marketing material or solicitation in Wisconsin. If that person persists in the use of the marketing material or solicitation, then the division may impose a civil penalty of up to \$1,000 for each violation. Each instance in which the marketing material or solicitation is sent to a customer or prospective customer shall constitute a separate violation of these provisions.
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 2. provided that the use or reference would not deceive or confuse a reasonable person regarding whether the marketing material or solicitation originated from or was endorsed by the existing association or whether the existing association was in any other way responsible for the marketing material or solicitation.

Document comparison done by DeltaView on Tuesday, March 18, 2003 10:47:30

Input:	
Document 1	iManage://GKMWIMAN/mw/679194/1
Document 2	iManage://GKMWIMAN/mw/679194/2
Rendering set	

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	0
Moved from	3
Moved to	3
Format changed	0
Total changes	12

MW698323_1.DOC

OTHER

DN: 9-12

2003 BILL

Handwritten initials

Quetz

UPS: Please fix request sheet

or credit union,

Regen

and "credit union"

1 AN ACT to create 214.035 (4), 215.26 (10) and 221.0404 of the statutes; relating
 2 to: the deceptive or misleading use of the name of a state-chartered bank,
 3 savings bank, ~~the~~ savings and loan association, the deceptive or misleading use
 4 of a name that is deceptively similar to the name of a state-chartered bank,
 5 savings bank, ~~the~~ savings and loan association, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law generally prohibits any person from making any assertion, representation, or statement of fact which is untrue, deceptive, or misleading in the person's commercial solicitations. Current law also limits the use of the terms "bank," "savings bank," ~~and~~ "savings and loan association," in certain circumstances.

With certain exceptions, this bill specifically prohibits any person from using the name of a state-chartered bank, savings bank, ~~the~~ savings and loan association (banking institution), or a name that is deceptively similar to such a name, in any marketing material provided to or solicitation of another person in a manner such that a reasonable person may believe that the marketing material or solicitation originated from or is endorsed by the banking institution, or that the banking institution is responsible for the marketing material or solicitation. This prohibition does not apply to a banking institution that uses its own name, to the use of such a name by an affiliate or agent of the banking institution, or to the use of such a name with consent of the banking institution.

, or credit union

BILL

INSERT 2-1

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:

SECTION ~~11~~ 214.035 (4) of the statutes is created to read:

214.035 (4) (a) Except as provided in par. (c), no person may use the name of a savings bank, or a name that is deceptively similar to the name of a savings bank, in any marketing material provided to or solicitation of another person in a manner such that a reasonable person may believe that the marketing material or solicitation originated from or is endorsed by the savings bank or that the savings bank is responsible for the marketing material or solicitation.

(a) (b) The division shall direct any person the division finds to have violated ~~sub. (a)~~ ^{par.} to cease and desist from violating ~~sub. (a)~~ ^{par. (a)}. If a person violates ~~sub. (a)~~ ^{par. (a)} after receiving such direction, the division may impose a forfeiture of up to \$1,000 for each violation. Each instance in which marketing material is provided to another person or solicitation of another person takes place in violation of ~~sub. (a)~~ ^{par. (a)} constitutes a separate violation. This subsection does not affect the availability of any remedies otherwise available to a savings bank.

(c) Paragraph (a) does not apply to a person who uses the name of a savings bank in any of the following circumstances:

1. With the consent of the savings bank.
2. If the person is the savings bank, an affiliate of the savings bank, or an agent of the savings bank.

SECTION ~~21~~ 215.26 (10) of the statutes is created to read:

BILL

1 215.26 (10) DECEPTIVE OR MISLEADING USE OF ASSOCIATION NAME. (a) Except as
2 provided in par. (c), no person may use the name of an association, or a name that
3 is deceptively similar to the name of an association, in any marketing material
4 provided to or solicitation of another person in a manner such that a reasonable
5 person may believe that the marketing material or solicitation originated from or is
6 endorsed by the association or that the association is responsible for the marketing
7 material or solicitation.

8 (b) The division shall direct any person the division finds to have violated ^{par.} ~~sub. (a)~~
9 ^(a) ~~(a)~~ to cease and desist from violating ^{par. (a)} ~~sub. (a)~~. If a person violates ^{par. (a)} ~~sub. (a)~~ after
10 receiving such direction, the division may impose a forfeiture of up to \$1,000 for each
11 violation. Each instance in which marketing material is provided to another person
12 or solicitation of another person takes place in violation of ^{par. (a)} ~~sub. (a)~~ constitutes a
13 separate violation. This subsection does not affect the availability of any remedies
14 otherwise available to an association.

15 (c) Paragraph (a) does not apply to a person who uses the name of an association
16 in any of the following circumstances:

- 17 1. With the consent of the association.
- 18 2. If the person is the association, an affiliate of the association, or an agent of
19 the association.

20 SECTION ~~5~~ [#] 221.0404 [✓] of the statutes is created to read:

21 **221.0404 Deceptive or misleading use of bank name.** (1) USE OF BANK
22 NAME FOR MARKETING PURPOSES. Except as provided in sub. (3), no person may use the
23 name of a bank, or a name that is deceptively similar to the name of a bank, in any
24 marketing material provided to or solicitation of another person in a manner such
25 that a reasonable person may believe that the marketing material or solicitation

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1 originated from or is endorsed by the bank or that the bank is responsible for the
2 marketing material or solicitation.

3 (2) ENFORCEMENT AND PENALTIES. The division shall direct any person the
4 division finds to have violated sub. (1) to cease and desist from violating sub. (1). If
5 a person violates sub. (1) after receiving such direction, the division may impose a
6 forfeiture of up to \$1,000 for each violation. Each instance in which marketing
7 material is provided to another person or solicitation of another person takes place
8 in violation of sub. (1) constitutes a separate violation. This subsection does not
9 affect the availability of any remedies otherwise available to a bank.

10 (3) EXCEPTIONS. Subsection (1) does not apply to a person who uses the name
11 of a bank in any of the following circumstances:

12 (a) With the consent of the bank.

13 (b) If the person is the bank, an affiliate of the bank, or an agent of the bank.

14 (END)

INSERT 2-1

SECTION 1. 186.035[✓] of the statutes is created to read:

186.035 Deceptive or misleading use of credit union name. (1) USE OF CREDIT UNION NAME FOR MARKETING PURPOSES. Except as provided in sub. (3)[✓], no person may use the name of a credit union, or a name that is deceptively similar to the name of a credit union, in any marketing material provided to or solicitation of another person in a manner such that a reasonable person may believe that the marketing material or solicitation originated from or is endorsed by the credit union or that the credit union is responsible for the marketing material or solicitation.

(2) ENFORCEMENT AND PENALTIES. The office of credit unions shall direct any person the office finds to have violated sub. (1)[✓] to cease and desist from violating sub. (1)[✓]. If a person violates sub. (1)[✓] after receiving such direction, the office of credit unions may impose a forfeiture of up to \$1,000 for each violation. Each instance in which marketing material is provided to another person or solicitation of another person takes place in violation of sub. (1)[✓] constitutes a separate violation. This subsection[✓] does not affect the availability of any remedies otherwise available to a credit union.

(3) EXCEPTIONS. Subsection (1)[✓] does not apply to a person who uses the name of a credit union in any of the following circumstances:

- (a) With the consent of the credit union.
- (b) If the person is the credit union, an affiliate of the credit union, or an agent of the credit union.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

3273/1 dn
LRB-2289/1dn
RJM:kjf:1A

~~March 13, 2003~~ Date

Montgomery
Representative Montgomery

and the Office of
Credit Unions

Senator Schultz:

Attached is the bank name protection draft you requested. As you review the draft, please note the following:

1. As drafted, the prohibitions in this draft only apply to the use of a banking institution's name in marketing materials provided to or solicitations of another person. Please let me know if this scope is not consistent with your intent. I also tried to clarify the prohibition against using a name that is deceptively similar to the name of an existing banking institution. See proposed s. 221.0404 (1), for example.

2. This draft would be enforced by the Division of Banking. See proposed s. 221.0404 (2), for example. You may want to have ~~the division~~ review the draft to ensure that enforcement is feasible. In particular, it is unclear how the division would interpret the enforcement provisions in this draft in conjunction with the division's other enforcement powers under s. 220.04 (9) and (10), stats. Also, because any person may violate this draft, the draft could require the ~~division~~ to exercise jurisdiction outside of its area of expertise. If you are interested in utilizing a different agency for enforcement, you may want to contact the Department of Agriculture, Trade and Consumer Protection, which currently enforces prohibitions with regard to false and deceptive advertising. DFI

3. Please note that I deleted certain unnecessary language from the enforcement provisions and made other clarifications.

4. I did not include an exception for a use that would not deceive or confuse a reasonable person. As I understand your intent, that exception is unnecessary because the prohibitions in the draft only apply to a use that may deceive or confuse a reasonable person.

5. I did not add a specific exception for the use of a banking institution's name by the institution's parent company. That exception is covered by the exception for use of a name by the institution's affiliates. An affiliate of a banking institution typically would include a company that controls, is controlled by, or is under common control with the institution. agency

Please let me know if you have any questions or desire any changes to the draft.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: robert.marchant@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3273/1dn
RJM:kjf:rs

September 18, 2003

Representative Montgomery:

Attached is the bank name protection draft you requested. As you review the draft, please note the following:

1. This draft would be enforced by the Division of Banking and the Office of Credit Unions. See proposed s. 221.0404 (2), for example. You may want to have DFI review the draft to ensure that enforcement is feasible. In particular, it is unclear how the division would interpret the enforcement provisions in this draft in conjunction with the division's other enforcement powers under s. 220.04 (9) and (10), stats. Also, because any person may violate this draft, the draft could require the agency to exercise jurisdiction outside of its area of expertise. If you are interested in utilizing a different agency for enforcement, you may want to contact the Department of Agriculture, Trade and Consumer Protection, which currently enforces prohibitions with regard to false and deceptive advertising.
2. Please note that I deleted certain unnecessary language from the enforcement provisions and made other clarifications.
3. I did not include an exception for a use that would not deceive or confuse a reasonable person. As I understand your intent, that exception is unnecessary because the prohibitions in the draft only apply to a use that may deceive or confuse a reasonable person.
4. I did not add a specific exception for the use of a banking institution's name by the institution's parent company. That exception is covered by the exception for use of a name by the institution's affiliates. An affiliate of a banking institution typically would include a company that controls, is controlled by, or is under common control with the institution.

Please let me know if you have any questions or desire any changes to the draft.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: robert.marchant@legis.state.wi.us

Emery, Lynn

From: Mathy, Michael
Sent: Friday, November 07, 2003 1:47 PM
To: LRB.Legal
Subject: LRB 3273/1

Please send the Assembly jacket for LRB 3273/1 -- the Bank Name Protection Bill

Mike Mathy
Legislative Assistant
Office of Representative Phil Montgomery
129 West, State Capitol
Tel: 608.266.5841