

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2289/1dn

RJM:kjf:pg

March 13, 2003

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.
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.

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