

2003 SENATE BILL 326

November 26, 2003 – Introduced by Senators SCHULTZ, M. MEYER, CARPENTER, REYNOLDS, S. FITZGERALD, LAZICH, LEIBHAM, HANSEN, ERPENBACH, BRESKE, KEDZIE and COWLES, cosponsored by Representatives MONTGOMERY, VAN ROY, RICHARDS, JOHNSRUD, SHILLING, HUEBSCH, MOLEPSKE, KREIBICH, KRAWCZYK, HUNDERTMARK, TOWNSEND, HINES, CULLEN, HAHN, SUDER, FREESE, OTT, WEBER, OLSEN, JESKEWITZ, J. LEHMAN, TOWNS and SERATTI. Referred to Committee on Agriculture, Financial Institutions and Insurance.

1 **AN ACT** *to create* 186.035, 214.035 (4), 215.26 (10) and 221.0404 of the statutes;
2 **relating to:** the deceptive or misleading use of the name of a state-chartered
3 bank, savings bank, savings and loan association, or credit union, the deceptive
4 or misleading use of a name that is deceptively similar to the name of a
5 state-chartered bank, savings bank, savings and loan association, or credit
6 union, 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," "savings and loan association," and "credit union" in certain circumstances.

With certain exceptions, this bill specifically prohibits any person from using the name of a state-chartered bank, savings bank, savings and loan association, or credit union (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

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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.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 186.035 of the statutes is created to read:

2 **186.035 Deceptive or misleading use of credit union name. (1)** USE OF
3 CREDIT UNION NAME FOR MARKETING PURPOSES. Except as provided in sub. (3), no person
4 may use the name of a credit union, or a name that is deceptively similar to the name
5 of a credit union, in any marketing material provided to or solicitation of another
6 person in a manner such that a reasonable person may believe that the marketing
7 material or solicitation originated from or is endorsed by the credit union or that the
8 credit union is responsible for the marketing material or solicitation.

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

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

19 (a) With the consent of the credit union.

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1 (b) If the person is the credit union, an affiliate of the credit union, or an agent
2 of the credit union.

3 **SECTION 2.** 214.035 (4) of the statutes is created to read:

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

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

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

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

22 **SECTION 3.** 215.26 (10) of the statutes is created to read:

23 215.26 (10) DECEPTIVE OR MISLEADING USE OF ASSOCIATION NAME. (a) Except as
24 provided in par. (c), no person may use the name of an association, or a name that
25 is deceptively similar to the name of an association, in any marketing material

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1 provided to or solicitation of another person in a manner such that a reasonable
2 person may believe that the marketing material or solicitation originated from or is
3 endorsed by the association or that the association is responsible for the marketing
4 material or solicitation.

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

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

14 1. With the consent of the association.

15 2. If the person is the association, an affiliate of the association, or an agent of
16 the association.

17 **SECTION 4.** 221.0404 of the statutes is created to read:

18 **221.0404 Deceptive or misleading use of bank name. (1)** USE OF BANK
19 NAME FOR MARKETING PURPOSES. Except as provided in sub. (3), no person may use the
20 name of a bank, or a name that is deceptively similar to the name of a bank, in any
21 marketing material provided to or solicitation of another person in a manner such
22 that a reasonable person may believe that the marketing material or solicitation
23 originated from or is endorsed by the bank or that the bank is responsible for the
24 marketing material or solicitation.

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

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

10 (a) With the consent of the bank.

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

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(END)