

2003 DRAFTING REQUEST

Bill

Received: **03/12/2003**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Dale Schultz (608) 266-0703**

By/Representing: **jonathan**

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: **Sen.Schultz@legis.state.wi.us**

Carbon copy (CC:) to: **robert.marchant@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Bank 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 03/13/2003	kfollett 03/13/2003		_____			State
/1	rmarchan 10/22/2003	kfollett 10/23/2003	pgreensl 03/13/2003	_____	amentkow 03/13/2003		State
/2			jfrantze	_____	lemery	Inorthro	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			10/23/2003 _____		10/23/2003	11/12/2003	

FE Sent For:

<END>

At
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May Contact:

Addl. Drafters:

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No specific pre topic given

Topic:

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Instructions:

See Attached

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/?	rmarchan	11 kjf 3/13	3/13 p8	3/13 p8			

FE Sent For:

<END>

RJM

Bill Request Form

Legislative Reference Bureau
100 N. Hamilton Street
Legal Section. 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date 3/12/03

Legislator, agency, or other person requesting this draft Sen. Schultz

Person submitting request (name and phone number) Jonathan Klein See 0703

Persons to contact for questions about this draft (names and phone numbers) same ↑

Describe the problem, including any helpful examples. How do you want to solve the problem?

See attached

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2001 LRB-2345/1 or 1999AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES NO

If yes: Anyone who asks? YES NO
 Any legislator? YES NO

Only the following persons Darryl Lund Community Bankers of WI

Do you consider this request urgent? YES NO If yes, please indicate why _____

Should we give this request priority over any pending request of this legislator, agency, or person? YES NO



Community Bankers of Wisconsin

455 County Road M, Suite 101 Madison, WI 53719-4983

Phone (608) 833-4229 Fax (608) 833-8114

www.communitybankers.org

Bank Name Protection Legislation

CBW will be introducing legislation this session to address the deceptive use of a bank's name in marketing schemes.

Wisconsin Statutes currently prohibit a person from falsely representing to the public that they are a bank. This legislation would further prohibit the unauthorized use of a legitimate bank's name in the deceptive attempt to reach the target of the marketer's solicitation. Some marketers (e.g. mortgage life and disability insurance companies) have adopted the practice of designing solicitations by using the name of the prospective customer's bank on the outside of the envelope or directly in the marketing material. Such solicitations are clearly designed to give the prospective customer the false impression that the mail is from their bank. After the customer has read the content of the solicitation, they are frequently, and mistakenly, offended that their bank has marketed to them in such a fashion. If they do read closely enough to figure out that the solicitation is not actually from their bank, they may still reach the erroneous conclusion that their bank participated in or endorsed the solicitation because the bank's name was prominently used on the envelope or in the enclosed materials.

Community banks and their customers are very protective of financial privacy. Passage of this legislation would help prevent bank customers from being misled into believing that their privacy has been violated.

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

January 16, 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 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 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 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.
- (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.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2289/1
RJM:IGF

due-3-27-03

(PWR)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

(Coen)

1 AN ACT ...; relating to: the deceptive or misleading use of the name of a
2 state-chartered bank, savings bank, or savings and loan association, the
3 deceptive or misleading use of a name that is deceptively similar to the name
4 of a state-chartered bank, savings bank, or savings and loan association, and
5 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, or 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.

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. 214.035[✓] (4) of the statutes is created to read:

(2) 214.035 (4) ^{De}(a) Except as provided in par. [✓](c), no person may use the name of
3 a savings[✓] bank, or a name that is deceptively similar to the name of a savings bank,
4 in any marketing material provided to or solicitation of another person in a manner
5 such that a reasonable person may believe that the marketing material or
6 solicitation originated from or is endorsed by the savings bank or that the savings
7 bank is responsible for the marketing material or solicitation.

8 (b) The division[✓] shall direct any person the division finds to have violated sub.
9 (1)[✓] to cease and desist from violating sub.[✓](1). If a person violates sub.[✓](1) 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 sub. [✓](1) constitutes a
13 separate violation. This subsection does not affect the availability of any remedies
14 otherwise available to a savings bank.

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

(17) 1. ~~With~~ With the consent of the savings bank.

(18) 2. ~~If~~ If the person is the savings bank, an affiliate of the savings bank, or an agent
19 of the savings bank.

20 SECTION 2. 215.26[✓] (10) of the statutes is created to read:

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 sub.
9 (1) to cease and desist from violating sub. (1). If a person violates sub. (1) 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 sub. (1) 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. ~~(a)~~ With the consent of the association.

18 2. ~~(b)~~ If the person is the association, an affiliate of the association, or an agent
19 of the association.

20 SECTION 3. 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

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)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2289/1dn
RJM:KJF

Date

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} bill 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. X

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. X

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

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

Marchant, Robert

From: Klein, Jonathan
Sent: Tuesday, October 21, 2003 12:09 PM
To: Marchant, Robert
Subject: Bank Name Protection

Rob,

I need LRB-289/1 revised to include credit unions as well as banks. Rep. Montgomery requested this in their draft LRB-3273/1. Essentially I am asking for an identical draft. Thanks for all you've done for our office lately.

Jonathan Klein
Office of Senator Dale Schultz
(800) 978-8008
(608) 266-0703

D-Note

2289/1/2

2003 - 2004 LEGISLATURE

LRB-5273A

RJM:kjf:ks

Seow

Sumner

2003 BILL

Regen

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

BILL

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.

BILL

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

BILL

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.

BILL

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.

12

(END)

D-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

2289/2cu
LRB-3273/1dm
RJM:kjf/ps

September 18, 2003

Date

Senator Schultz

~~Representative Montgomery:~~

Attached is the bank name protection draft you requested. As you review the draft, please note ~~the following.~~ *that this* ↑

~~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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2289/2dn
RJM:kjf:jf

October 23, 2003

Senator Schultz:

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

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

Northrop, Lori

From: OBrien, John
Sent: Wednesday, November 12, 2003 9:48 AM
To: LRB.Legal
Subject: Draft review: LRB 03-2289/2 Topic: Bank name protection

It has been requested by <OBrien, John> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-2289/2 Topic: Bank name protection