



Sen. Laura Ellman

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10400SB2318sam002

LRB104 11891 BAB 24836 a

1 AMENDMENT TO SENATE BILL 2318

2 AMENDMENT NO. _____. Amend Senate Bill 2318, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Illinois Banking Act is amended by
6 changing Section 46 as follows:

7 (205 ILCS 5/46) (from Ch. 17, par. 357)

8 Sec. 46. Misleading practices and names prohibited;
9 penalty.

10 (a) No person, firm, partnership, or corporation that is
11 not a bank shall transact business in this State in a manner
12 which has a substantial likelihood of misleading the public by
13 implying that the business is a bank, or shall use the word
14 "bank", "banker", or "banking" in connection with the
15 business. Any person, firm, partnership or corporation
16 violating this Section shall be deemed guilty of a Class A

1 misdemeanor, and the Attorney General or State's Attorney of
2 the county in which any such violation occurs may restrain
3 such violation by a complaint for injunctive relief.

4 (b) If the Commissioner is of the opinion and finds that a
5 person, firm, partnership, or corporation that is not a bank
6 has transacted or intends to transact business in this State
7 in a manner which has a substantial likelihood of misleading
8 the public by implying that the business is a bank, or has used
9 or intends to use the word "bank", "banker", or "banking" in
10 connection with the business, then the Commissioner may direct
11 that person, firm, partnership, or corporation to cease and
12 desist from transacting the business or using the word "bank",
13 "banker", or "banking". If that person, firm, partnership, or
14 corporation persists in transacting the business or using the
15 word "bank", "banker", or "banking", then the Commissioner may
16 impose a civil penalty of up to \$10,000 for each violation.
17 Each day that the person, firm, partnership, or corporation
18 continues transacting the business or using the word "bank",
19 "banker", or "banking" in connection with the business shall
20 constitute a separate violation of these provisions.

21 (c) A person, firm, partnership, or corporation that is
22 not a bank, and is not transacting or intending to transact
23 business in this State in a manner that has a substantial
24 likelihood of misleading the public by implying that such
25 business is a bank, may apply to the Commissioner for
26 permission to use the word "bank", "banker", or "banking" in

1 connection with the business. If the Commissioner determines
2 that there is no substantial likelihood of misleading the
3 public, and upon such conditions as the Commissioner may
4 impose to prevent the person, firm, partnership, or
5 corporation from holding itself out in a misleading manner,
6 then such person, firm, partnership, or corporation may use
7 the word "bank", "banker", or "banking".

8 (d) (1) Unless otherwise expressly permitted by law,
9 no person, firm, partnership, or corporation may use the
10 name of an existing bank when marketing to or soliciting
11 business from customers or prospective customers if the
12 reference to the existing bank is made without the consent
13 of the existing bank.

14 (1.5) Unless otherwise expressly permitted by law, no
15 person, firm, partnership, or corporation may use a name
16 similar to that of an existing bank when marketing to or
17 soliciting business from customers or prospective
18 customers if the similar name is used in a manner that
19 could cause a reasonable person to believe that the
20 marketing material or solicitation originated from or is
21 endorsed by the existing bank or that the existing bank is
22 in any other way responsible for the marketing material or
23 solicitation.

24 (2) An existing bank may, in addition to any other
25 remedies available under the law, report an alleged
26 violation of this subsection (d) to the Commissioner. If

1 the Commissioner finds the marketing material or
2 solicitation in question to be in violation of this
3 subsection, the Commissioner may direct the person, firm,
4 partnership, or corporation to cease and desist from using
5 that marketing material or solicitation in Illinois. If
6 that person, firm, partnership, or corporation persists in
7 the use of the marketing material or solicitation, then
8 the Commissioner may impose a civil penalty of up to
9 \$10,000 for each violation. Each instance in which the
10 marketing material or solicitation is sent to a customer
11 or prospective customer shall constitute a separate
12 violation of these provisions. The Commissioner is
13 authorized to adopt ~~promulgate~~ rules to administer these
14 provisions.

15 (3) (Blank).

16 (e) If a person, firm, partnership, or corporation that
17 (i) does not accept insured deposits as a substantial portion
18 of its operations and (ii) is not chartered by a State or the
19 United States violates subsection (a), (b), or (c) of this
20 Section, the Commissioner may impose a civil penalty of up to
21 the maximum amount permitted under paragraph (8) of Section 48
22 of this Act for each violation.

23 (Source: P.A. 92-476, eff. 8-23-01; 92-811, eff. 8-21-02.)".