

SENATE BILL NO. 999

94TH GENERAL ASSEMBLY
2008

4444S.01T

AN ACT

To repeal section 427.225, RSMo, and to enact in lieu thereof one new section relating to the deceptive use of a financial institution's name.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 427.225, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 427.225, to read as follows:

427.225. 1. Deceptive use of a financial institution's name in notification or solicitation occurs when a business, or a person acting on its behalf, engages in the following activity:

(1) Through advertisement, solicitation, or other notification, either verbally or through any other means, informs a consumer of the availability of any type of goods or services that are not free;

(2) The name of an unrelated and unaffiliated financial institution is mentioned in any manner;

(3) The goods or services mentioned are not actually provided by the unrelated and unaffiliated financial institution whose name is mentioned;

(4) The business on whose behalf the notification or solicitation is made does not have a consensual right to mention the name of the unrelated and unaffiliated financial institution; and

(5) Neither the actual name nor trade name of the business on whose behalf the notification or solicitation is being made is stated, nor the actual name or trade name of any actual provider of the goods or services is stated, so as to clearly identify for the consumer a name that is distinguishable and separate from the name of the unrelated and unaffiliated financial institution whose name is mentioned in any manner in the notification or solicitation, and thereby a misleading implication or ambiguity is created, such that a consumer who is the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

21 recipient of the advertisement, solicitation or notification may reasonably but
22 erroneously believe:

23 (a) That the goods or services whose availability is mentioned are made
24 available by or through the unrelated and unaffiliated financial institution whose
25 name is mentioned; or

26 (b) That the unrelated and unaffiliated financial institution whose name
27 is mentioned is the one communicating with the consumer.

28 2. Deceptive use of another's name in notification or solicitation occurs
29 when a business, or a person acting on its behalf, engages in the following
30 activity:

31 (1) Falsely states or implies that any person, product or service is
32 recommended or endorsed by a named third-person financial institution; or

33 (2) Falsely states that information about the consumer including but not
34 limited to the name, address, or phone number of the consumer has been provided
35 by a third-person financial institution, whether that person is named or
36 unnamed.

37 3. [Only] The financial institution whose name is deceptively used, as
38 provided in this section, may bring a private civil action and recover a minimum
39 amount of ten thousand dollars, court costs, and attorney fees plus any damages
40 such financial institution may prove at trial.

41 4. For the purposes of this section, a financial institution includes a
42 commercial bank, savings and loan association, savings bank, credit union,
43 mortgage banker, or consumer finance company, or an institution chartered
44 pursuant to the provisions of an act of the United States known as the Farm
45 Credit Act of 1971.

46 5. **Nothing contained in this section shall bar the attorney**
47 **general from enforcing the provisions of sections 407.010 to 407.145,**
48 **RSMo.**

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