

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

2

HOUSE BILL 1168
Committee Substitute Favorable 4/27/05

Short Title: Prohibit Deceptive Marketing/Banking Services.

(Public)

Sponsors:

Referred to:

April 11, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DECEPTIVE USE OF THE NAME OR LOGO OF A
BANKING ENTITY WITHOUT PERMISSION IN THE MARKETING OF
FINANCIAL PRODUCTS AND SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-127 reads as rewritten:

"§ 53-127. **Unlawful use of terms indicating that business is bank or trust
~~company, company; unauthorized use of name of banking entity.~~**

(a) Definitions. The following definitions apply in this section.

(1) Banking. The business of receiving or soliciting money on deposit.

(2) Banking entity. A person, partnership, corporation, or other entity that is engaged in the banking or trust business in North Carolina and is (i) subject to the supervision of the Commissioner of Banks under this Chapter, (ii) subject to supervision by the Commissioner of Banks under Chapter 54B or Chapter 54C, or (iii) a banking or savings institution authorized to transact a banking or trust business in this State under federal law. The term "banking entity" includes a credit union chartered under the laws of this State or under federal law, but only with regard to subsections (c1), (d), (e), and (f) of this section.

(3) Nonbanking entity. A person, partnership, corporation, or other entity that is not a banking entity.

(b) Restrictions. No nonbanking entity may use any sign or written or printed paper indicating that it is a bank, savings bank, trust company, or place of banking. No entity may use the word "bank", "savings bank", "banking", "banker", or "trust company", or the equivalent or plural of any of these words in connection with any business other than that of banking. This section does not prohibit an individual from acting in a trust capacity.

(c) Exceptions.

- 1 (1) A nonbanking entity may use any of the terms listed above in its name
2 if the context or remaining words show clearly that the business is not
3 a bank or trust company and is not engaged in the banking or trust
4 business.
- 5 (2) A nonbanking entity may use any of the terms listed above where the
6 term is the proper name of a principal or former principal in the entity
7 and the use of the name is made in good faith and not in an effort to
8 deceive the public.
- 9 (3) A corporation that is a bank holding company as defined in
10 G.S. 53-226(2) or a savings and loan holding company as defined in
11 G.S. 54B-261(d) may use the words "bank", "banker", and "trust
12 company", and the equivalent and plural of these words in its name
13 and may use a name similar to that of any of its subsidiary banks or
14 stock associations.
- 15 (4) A corporation incorporated before January 1, 1905, may retain the
16 word "trust" in its name, although it does not transact a business that
17 requires examination by the Commissioner of Banks.

18 (c1) No person shall use the name or logo of any banking entity in connection
19 with the sale, offering for sale, or advertising of any financial product or service without
20 the express written consent of the banking entity.

21 (d) Penalty. Violation of subsections (a) through (c1) of this section is a Class 3
22 misdemeanor, punishable only by a fine of up to five hundred dollars (\$500.00).

23 (e) Any banking entity may file an action to enjoin the use of the banking entity's
24 name or logo in connection with the sale, offering for sale, distribution, or advertising of
25 any product or service without the express written consent of the banking entity. Any
26 court of competent jurisdiction may grant injunctions to restrain the use and may require
27 the defendants to pay to the banking entity all profits derived from, and all damages
28 suffered by, reason of the wrongful use of the name or logo.

29 (f) The provisions of this section are not exclusive remedies and do not preclude
30 the use of any other remedy by law."

31 **SECTION 2.** This act becomes effective December 1, 2005, and applies to
32 offenses committed on or after that date.