

# SENATE MOTION

**MR. PRESIDENT:**

**I move** that Engrossed House Bill 1834 be amended to read as follows:

- 1           Page 4, line 29, after "other corporation" delete ",".
- 2           Page 4, between lines 37 and 38, begin a new paragraph and insert:
- 3           "SECTION 6. IC 28-1-20-4, IS AMENDED TO READ AS
- 4           FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Except as
- 5           provided in subsections (c), (d), (g), and (k), it is unlawful for any
- 6           person, firm, limited liability company, or corporation (other than a
- 7           bank or trust company, **bank holding company**, or corporate fiduciary
- 8           organized or reorganized under IC 28 or statutes in effect at the time of
- 9           organization or reorganization or under the laws of the United States):
- 10           (1) to use the word "bank", **banc, or banco** as a part of the name
- 11           or title of the person, firm, or corporation; or
- 12           (2) to advertise or represent the person, firm, limited liability
- 13           company, or corporation to the public:
- 14           (A) as a bank or trust company or a corporate fiduciary; or
- 15           (B) as affording the services or performing the duties which by
- 16           law only a bank or trust company or a corporate fiduciary is
- 17           entitled to afford and perform.
- 18           (b) A financial institution organized under the laws of any state or
- 19           the United States that establishes a branch office under this title is
- 20           authorized to do business at that branch using a name other than the
- 21           name of its home office.
- 22           (c) Notwithstanding the prohibitions of this section, an out-of-state
- 23           financial institution with the word "bank" in its legal name may use the
- 24           word "bank" if the financial institution is insured by the Federal
- 25           Deposit Insurance Corporation or its successor.
- 26           (d) Notwithstanding subsection (a), a building and loan association
- 27           organized under IC 28-4 (before its repeal) may include in its name or
- 28           title:
- 29           (1) the words "savings bank"; or
- 30           (2) the word "bank" if the name or title also includes either the
- 31           words "savings bank" or letters "SB".

1 A building and loan association that includes "savings bank" in its title  
 2 under this section does not by that action become a savings bank for  
 3 purposes of IC 28-6.1.

4 (e) The name or title of a savings bank governed by IC 28-6.1 must  
 5 include the words "savings bank" or the letters "SB".

6 (f) A savings association may include in its name the words  
 7 "building and loan association".

8 (g) Notwithstanding subsection (a), a bank holding company (as  
 9 defined in 12 U.S.C. 1841) may use the word "bank" or "banks" as a  
 10 part of its name. However, this subsection does not permit a bank  
 11 holding company to advertise or represent itself to the public as  
 12 affording the services or performing the duties that by law a bank or  
 13 trust company only is entitled to afford and perform.

14 (h) The department is authorized to investigate the business affairs  
 15 of any person, firm, limited liability company, or corporation that uses  
 16 "bank", **banc, or banco** in its title or holds itself out as a bank,  
 17 corporate fiduciary, or trust company for the purpose of determining  
 18 whether the person, firm, limited liability company, or corporation is  
 19 violating any of the provisions of this article, and, for that purpose, the  
 20 department and its agents shall have access to any and all of the books,  
 21 records, papers, and effects of the person, firm, limited liability  
 22 company, or corporation. In making its examination, the department  
 23 may examine any person and the partners, officers, members, or agents  
 24 of the firm, limited liability company, or corporation under oath,  
 25 subpoena witnesses, and require the production of the books, records,  
 26 papers, and effects considered necessary. On application of the  
 27 department, the circuit or superior court of the county in which the  
 28 person, firm, limited liability company, or corporation maintains a  
 29 place of business shall, by proper proceedings, enforce the attendance  
 30 and testimony of witnesses and the production and examination of  
 31 books, papers, records, and effects.

32 (i) The department is authorized to exercise the powers under  
 33 IC 28-11-4 against a person, firm, limited liability company, or  
 34 corporation that improperly holds itself out as a financial institution.

35 (j) A person, firm, limited liability company, or corporation who  
 36 violates this section is subject to a penalty of ~~two five~~ **five** hundred dollars  
 37 (~~\$200~~) **(\$500)** per day for each and every day during which the  
 38 violation continues. The penalty imposed shall be recovered in the  
 39 name of the state on relation of the department and, when recovered,  
 40 shall be paid into the financial institutions fund established by  
 41 IC 28-11-2-9.

42 (k) The word "bank", **banc, or banco** may not be included in the  
 43 name of a corporate fiduciary.

44 **(l) A person, firm, limited liability company, or corporation may**  
 45 **not use the name of an existing bank or bank holding company or**  
 46 **a name confusingly similar to that of an existing bank or bank**  
 47 **holding company when marketing to or soliciting business from a**

1 customer or prospective customer if the reference to the existing  
2 bank or bank holding company is:

3 (1) without the consent of the existing bank or bank holding  
4 company; and

5 (2) in a manner that could cause a reasonable person to  
6 believe that the marketing material or solicitation:

7 (A) originated from;

8 (B) is endorsed by; or

9 (C) is in any other way the responsibility of;

10 the existing bank or bank holding company.

11 (m) An existing bank or bank holding company may, in addition  
12 to any other remedies available under the law, report an alleged  
13 violation of subsection (l) to the department. If the department  
14 finds that the marketing material or solicitation in question is in  
15 violation of subsection (l), the department may direct the person,  
16 firm, limited liability company, or corporation to cease and desist  
17 from using that marketing material or solicitation in Indiana. If  
18 that person, firm, limited liability company, or corporation persists  
19 in using the marketing material or solicitation, the department  
20 may impose a civil penalty of up to fifteen thousand dollars  
21 (\$15,000) for each violation. Each instance in which the marketing  
22 material or solicitation is sent to a customer or prospective  
23 customer constitutes a separate violation of subsection (l).

24 (n) Nothing in subsection (l) or (m) prohibits the use of or  
25 reference to the name of an existing bank or bank holding company  
26 in marketing materials or solicitations, if the use or reference does  
27 not deceive or confuse a reasonable person regarding whether the  
28 marketing material or solicitation:

29 (1) originated from;

30 (2) is endorsed by; or

31 (3) is in any other way the responsibility of;

32 the existing bank or bank holding company.

33 (o) The department may adopt rules under IC 4-22-2 to  
34 implement this section."

35 Page 4, line 41, delete "this state" and insert "Indiana".

36 Page 5, line 39, after "Act" delete ".".

37 Page 6, line 5, delete "section." and insert "chapter."

38 Page 13, line 32, delete "or".

39 Page 14, line 12, insert "A".

40 Page 21, line 16, after "other corporation" delete ",".

41 Page 22, line 13, delete "(12)For" and insert "(12) For".

- 1 Page 24, line 10, delete ",".
- 2 Page 24, line 11, delete "section" and insert "**chapter.**".
- 3 Renumber all SECTIONS consecutively.  
(Reference is to EHB 1834 as printed April 1, 2003.)

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Senator DROZDA