

367.352 Prohibition against the unauthorized use of financial institution-related names, characters, and trademarks in marketing and solicitations -- Exceptions -- Enforcement and penalties -- Administrative regulations.

- (1) As used in this section:
 - (a) 1. "Financial institution" means any bank, bank holding company, trust company, savings and loan association, savings and loan association holding company, credit union, mortgage loan company, mortgage loan broker, consumer loan company, broker-dealer, covered adviser, investment adviser, or wholly owned subsidiary of any of the foregoing, that is organized under the laws of this state, any other state, or the United States.
 2. As used in this paragraph, "broker-dealer," "covered adviser," and "investment adviser" have the same meaning as in KRS 292.310; and
 - (b) "Person" has the same meaning as in KRS 367.110.
- (2) Except as provided in subsection (3) of this section, a person that is not a financial institution shall not use the following in any marketing material, solicitation, or advertising distributed in this state:
 - (a) The name, trade name, trademark, service mark, logo, or symbol, or any combination thereof, of any financial institution; or
 - (b) Any name, trade name, trademark, service mark, logo, or symbol, or any combination thereof, that is similar to the name, trade name, trademark, service mark, logo, or symbol of any financial institution.
- (3) Subsection (2) of this section shall not apply if:
 - (a) The marketing material, solicitation, or advertising is distributed with the consent of the financial institution, which may be provided by the financial institution in written or electronic format; or
 - (b) 1. The person includes the following notice in the marketing material, solicitation, or advertising:

"This marketing material, solicitation, or advertising did not originate from, is not endorsed by, and has not been consented to by [insert name of financial institution and any affiliated trade name, trademark, service mark, logo, or symbol used in the marketing material, solicitation, or advertising]."
 2. The notice required under subparagraph 1. of this paragraph shall be:
 - a. In boldface type that is not smaller than the type for any use referenced in subsection (2) of this section; and
 - b. In a conspicuous location:
 - i. On the face of the marketing material, solicitation, or advertising; and
 - ii. In any other area of the marketing material, solicitation, or advertising where any use referenced in subsection (2) of this section is visible or printed.
- (4) (a) A violation of this section shall be deemed to be an unfair, false, misleading,

or deceptive act or practice in the conduct of trade or commerce in violation of KRS 367.170.

- (b) All of the remedies, powers, and duties provided to the Attorney General or any other person under KRS 367.110 to 367.300, and the penalties provided in KRS 367.990, pertaining to acts and practices declared unlawful by KRS 367.170, shall apply with equal force and effect to a violation of this section.
- (5)
- (a) The Attorney General may institute an action in any court of competent jurisdiction against any person alleged to have violated this section.
 - (b) A trade organization representing one (1) or more financial institution industries may institute an action in any court of competent jurisdiction against any person alleged to have violated this section with respect to two (2) or more financial institutions that are members of the represented industry or industries.
 - (c) A financial institution may institute an action in any court of competent jurisdiction against any person alleged to have used the following in violation of this section:
 - 1. The financial institution's name, trade name, trademark, service mark, logo, or symbol, or any combination thereof; or
 - 2. Any name, trade name, trademark, service mark, logo, or symbol, or any combination thereof, that is similar to the financial institution's name, trade name, trademark, service mark, logo, or symbol.
 - (d) In any action brought under this subsection, if the court finds that the person has violated this section:
 - 1. The plaintiff may:
 - a. Obtain an injunction to enjoin a continuance of the unlawful activity;
 - b. Recover damages at three (3) times the amount of any actual damages sustained, which shall be paid to the injured person or persons; and
 - c. Be awarded reasonable attorney's fees and costs; and
 - 2. In addition to the remedies and penalties provided under subparagraph 1. of this paragraph:
 - a. A plaintiff who is a trade organization or financial institution may recover a statutory penalty in the amount of five thousand dollars (\$5,000) per violation; and
 - b. The Attorney General may recover civil penalties in the amount of five thousand dollars (\$5,000) per violation.
 - (e) It shall not be necessary that actual damages be alleged or proved in order to recover injunctive relief, attorney's fees and costs, or the statutory penalty or civil penalties referenced in paragraph (d)2. of this subsection.

Commonwealth, or any other person under any other statutory or common law.

- (7) The Attorney General may promulgate administrative regulations in accordance with KRS Chapter 13A necessary to effectuate, or as an aid to the effectuation of, the proper enforcement of this section.

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