



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB1620

Introduced 2/19/2009, by Sen. Terry Link

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Derogatory Statements About Banks Act. Changes the name of the Act to the Derogatory Statements About Financial Institutions Act. Provides that a person shall not, for commercial purposes, use any investment rating or investment rating service as the basis for any statement or inference that the financial institution is in an unsafe or unsound condition, that the federally-insured deposits held by the financial institution are vulnerable to loss, or that the owner of the deposits may be subjected to inconvenience with respect to any federally-insured deposits. Provides that a person shall not, for commercial purposes, use the name, directly or by inference, of any State or federal regulatory agency or instrumentality as a source of information when making derogatory statements about the condition of one or more financial institutions, unless the person is citing publicly available information published by such regulatory agency or instrumentality. Provides that in addition to any cause of action that a financial institution may have against any person for damages caused by a violation of this Act, the Division of Banking of the Illinois Department of Financial and Professional Regulation is authorized to issue cease and desist orders against any person who violates the Act and to impose a civil monetary penalty of up to \$10,000 for each violation of the Act or of such cease and desist order.

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CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Derogatory Statements About Banks Act is  
5 amended by changing the title of the Act and Sections 0.01 and  
6 1 and by adding Sections 2 and 3 as follows:

7 (720 ILCS 300/Act title)

8 An Act to prevent derogatory statements affecting  
9 financial institutions ~~corporations doing a banking or trust~~  
10 ~~business.~~

11 (720 ILCS 300/0.01) (from Ch. 17, par. 900)

12 Sec. 0.01. Short title. This Act may be cited as the  
13 Derogatory Statements About Financial Institutions ~~Banks~~ Act.

14 (Source: P.A. 86-1324.)

15 (720 ILCS 300/1) (from Ch. 17, par. 901)

16 Sec. 1. Derogatory statements about financial  
17 institutions. Any person who shall willfully and maliciously  
18 make, circulate, or transmit to another or others, any  
19 statements, rumor or suggestion, written, printed or by word of  
20 mouth, which is directly or by inference derogatory to the  
21 financial condition, with intent to affect the solvency or

1 financial standing of any financial institution ~~corporation~~  
2 ~~doing a banking or trust business in this State, or any~~  
3 ~~building and loan association or federal savings and loan~~  
4 ~~association~~ doing business in this State, or who shall counsel,  
5 aid, procure or induce another to start, transmit or circulate  
6 any such statement, rumor or suggestion, shall be guilty of a  
7 Class A misdemeanor: However, the truth of said statement,  
8 established by the maker thereof, shall be a complete defense  
9 in any prosecution under the provisions of this Act. For the  
10 purposes of this Section, "intent to affect the solvency or  
11 financial standing" shall include, but not be limited to,  
12 knowledge possessed by a reasonable person that the circulation  
13 of his or her statement, rumor or suggestion would have the  
14 likely effect of damaging the solvency or financial standing of  
15 the financial institution.

16 (Source: P.A. 77-2830.)

17 (720 ILCS 300/2 new)

18 Sec. 2. Commercial violations.

19 (a) A person shall not, for commercial purposes, make any  
20 statement, whether written or verbal, derogatory to the  
21 financial condition of any financial institution or to the  
22 safety of federally-insured deposits maintained in accounts at  
23 any financial institution, in violation of this Section.

24 (b) A person shall not, for commercial purposes, use any  
25 investment rating or investment rating service as the basis for

1 any statement or inference that the financial institution is in  
2 an unsafe or unsound condition, that the federally-insured  
3 deposits held by the financial institution are vulnerable to  
4 loss, or that the owner of the deposits may be subjected to  
5 inconvenience with respect to any federally-insured deposits.

6 (c) A person shall not, for commercial purposes, use the  
7 name, directly or by inference, of any State or federal  
8 regulatory agency or instrumentality as a source of information  
9 when making derogatory statements about the condition of one or  
10 more financial institutions, unless the person is citing  
11 publicly available information published by such regulatory  
12 agency or instrumentality. It shall be the obligation of the  
13 person making the statement to prove that such information was  
14 publicly available at the time of the statement made by the  
15 person.

16 (d) If any person, for commercial purposes, makes any  
17 statement, directly or by inference, derogatory to the  
18 financial condition or to the safety of deposits held in a  
19 financial institution, such person must disclose the following  
20 information in a written form that may be retained by the  
21 person to whom such statement was made:

22 (1) the person's statement about the financial  
23 condition or the safety of deposits held in the financial  
24 institution is not based on any information obtained from a  
25 State or federal regulator that has examined the financial  
26 institution;

1           (2) an investment rating or investment rating service  
2           is not a reliable indicator of the financial condition of a  
3           financial institution or of the safety of deposits  
4           maintained at the financial institution;

5           (3) deposits in the financial institution are  
6           federally-insured and are not exposed to risk of loss  
7           unless the balance of the deposit account exceeds the  
8           specific amount of federal deposit insurance as determined  
9           by the type of account and the manner in which the account  
10          is structured; and

11          (4) withdrawal of deposits from the financial  
12          institution could cause the depositor to incur additional  
13          fees or charges and could expose the customer to risk of  
14          loss once the funds are removed from a federally-insured  
15          account at the financial institution.

16          (e) For purposes of this Act, a person makes a statement  
17          "for commercial purposes" if the statement is made to solicit  
18          business from a depositor of a financial institution or to  
19          otherwise influence a depositor of a financial institution to  
20          place or to withdraw funds in a manner that may benefit the  
21          business of the person making the statement or that may harm  
22          the business of the financial institution that may be in  
23          competition with the person making the statement.

24           (720 ILCS 300/3 new)

25          Sec. 3. Civil penalty. In addition to any cause of action

1 that a financial institution may have against any person for  
2 damages caused by a violation of this Act, the Division of  
3 Banking of the Illinois Department of Financial and  
4 Professional Regulation is authorized to issue cease and desist  
5 orders against any person who violates this Act and to impose a  
6 civil monetary penalty of up to \$10,000 for each violation of  
7 this Act or of such cease and desist order. Each statement made  
8 in violation of this Act shall constitute a separate violation  
9 that shall be subject to such a civil monetary penalty. The  
10 person making the statement in violation of this Act shall be  
11 liable for any statement that originated from such person, even  
12 if such statement was subsequently communicated or circulated  
13 by another person without the knowledge or consent of the first  
14 person.

1 INDEX

2 Statutes amended in order of appearance

3 720 ILCS 300/Act title

4 720 ILCS 300/0.01 from Ch. 17, par. 900

5 720 ILCS 300/1 from Ch. 17, par. 901

6 720 ILCS 300/2 new

7 720 ILCS 300/3 new