

2016 Regular Session

SENATE BILL NO. 312

BY SENATOR BARROW

COMMERCIAL REGULATIONS. Prohibits certain telemarketing phone calls to consumers by certain credit access business and provides penalties. (8/1/16)

1 AN ACT

2 To enact R.S. 9:3534.5, 3578.6(C) and 3579.5 and R.S. 45:844.18, relative to telemarketing
3 calls; to prohibit solicitation calls by certain credit access businesses; to provide for
4 penalties; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 9:3534.5, 3578.6(C) and 3579.5 are hereby enacted to read as
7 follows:

8 **§3534.5 Prohibited acts**

9 **A. A licensed lender shall not directly or through a representative make**
10 **a telephonic solicitation call, as defined in R.S. 45:844.12(6), to a consumer.**

11 **B. In addition to any other penalties, any lender found by the Louisiana**
12 **Public Service Commission to be in violation of Subsection A of this Section**
13 **shall be subject to the penalties provided in R.S. 45:844.15.**

14 * * *

15 §3578.6. Prohibited acts

16 * * *

17 **C. A licensee shall not directly or through a representative make a**

1 telephonic solicitation call, as defined in R.S. 45:844.12(6), to a consumer. In
 2 addition to any other penalties, any licensee found by the Louisiana Public
 3 Service Commission to be in violation of this Subsection shall be subject to the
 4 penalties provided in R.S. 45:844.15.

5 * * *

6 §3579.5. Prohibited acts

7 A. A lender shall not directly or through a facilitator or other
 8 representative make a telephonic solicitation call as defined in R.S. 45:844.12(6),
 9 to a consumer.

10 B. In addition to any other penalties, any lender or facilitator found by
 11 the Louisiana Public Service Commission to be in violation of Subsection A of
 12 this Section shall be subject to the penalties provided in R.S. 45:844.15.

13 Section 2. R.S. 45:844.18 is hereby enacted to read as follows:

14 §844.18. Prohibited telemarketing calls

15 A credit access business required to be licensed under the Consumer
 16 Credit Law or the Louisiana Deferred Presentment and Small Loan Act or the
 17 Louisiana Tax Refund Anticipation Loan Act or a representative of such
 18 business shall not make a telephonic solicitation call, as defined in R.S.
 19 45:844.12(6), to a consumer regardless of whether the consumer's name and
 20 telephone number are on the National Do Not Call Registry.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Dawn Romero Watson.

DIGEST

SB 312 Original

2016 Regular Session

Barrow

Proposed law prohibits a credit access business required to be licensed under the Consumer Credit Law or the Louisiana Deferred Presentment and Small Loan Act or the Louisiana Tax Refund Anticipation Loan Act or a representative of such businesses from making a telephonic solicitation call to a consumer regardless of whether the consumer's name and telephone number are on the National Do Not Call Registry.

Present law defines "telephonic solicitation" as any voice or data communication made by a telephonic solicitor to a residential telephonic subscriber for the purpose of encouraging a sale or rental of or investment in property, consumer goods, or services; or for the purpose of encouraging an extension of credit for property, consumer goods, or services; or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale

or rental of or investment in property, consumer goods, or services or an extension of credit for such purposes; or for the solicitation of a contribution to a charitable organization, but does not include voice or data communications made for any of the following reasons:

- (1) In response to an express request of the person called.
- (2) Primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call.
- (3) To any person with whom the telephonic solicitor has an existing business relationship, or a prior business relationship that was terminated or lapsed within six months of such call.
- (4) On behalf of an organization which has nonprofit status under the Internal Revenue Code, unless such organization utilizes the services of a paid professional solicitor.
- (5) For the purpose of conducting marketing research, public opinion polling, or similar activities that do not involve telephonic solicitation or selling.
- (6) Political activity.
- (7) By a person or business that conducts automobile sales and does not complete the sales presentation during the telephone solicitation and is made in contemplation of the sales presentation being completed at a later face-to-face meeting between the telephonic solicitor and the person contacted and where the contacted person has previously made purchases from the automobile dealership.
- (8) Without completing or attempting to complete a sale, the sale to be completed only after a face-to-face meeting between the telephonic solicitor and the person called at the telephonic solicitor's primary place of business or at another location selected by the purchaser.
- (9) For the purpose of follow-up or periodic wellness care when the call is made to the patient by the patient's optometrist, dentist, or chiropractic physician, or an agent thereof.
- (10) For the purpose of follow-up or periodic wellness care when the call is made to the client by the client's veterinarian or an agent thereof.
- (11) On behalf of an organization which has nonprofit status under Section 501(c)(5) of the Internal Revenue Code and is composed entirely of public safety personnel, the majority of whom are state residents calling from a location within the state.

Present law provides for enforcement of the Louisiana Telephone Solicitation Relief Act of 2001 by the Louisiana Public Service Commission (PSC) and provides that after investigation, notice and hearing, PSC may impose a penalty for a violation of present law of:

- (1) An administrative penalty against the telephonic solicitor not to exceed \$1,500 for each violation.
- (2) If the violation is committed against a residential telephonic subscriber over the age of 65, a penalty not to exceed \$3,000 for each violation.

Present law provides that any telephonic solicitor found by the PSC to be in violation of present law, who refuses to pay the fine assessed, shall after notice and hearing, be assessed additional costs and reasonable attorney fees related to the collection of the fine.

Proposed law provides that credit access businesses that are required to be licensed under the Consumer Credit Law or the Louisiana Deferred Presentment and Small Loan Act or the Louisiana Tax Refund Anticipation Loan Act that violate proposed law prohibition shall be subject to the present law penalties.

Effective August 1, 2016.

(Adds R.S. 9:3534.5, 3578.6(C) and 3579.5 and R.S. 45:844.18)