2021 Regular Session

HOUSE BILL NO. 359

BY REPRESENTATIVE HOLLIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

BANKS/BANKING: Provides relative to solicitors

1   AN ACT

2 To enact R.S. 6:412.1(I) and (J), relative to solicitors; to authorize enforcement by the

3   commissioner; to provide for false advertising law and penalties; to authorize

4   enforcement by the state attorney general; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6   Section 1. R.S. 6:412.1(I) and (J) are hereby enacted to read as follows:

7   §412.1. Soliciting using lender's name or customer loan information; restrictions;

8   injunction; damages; attorney fees; enforcement

9   *   *   *

10   I. The commissioner may use the enforcement powers of R.S. 6:121.1

11   against a solicitor who violates this Section. If the commissioner seeks injunctive

12   relief against a solicitor who violates this Section to enjoin the unlawful use of the

13   name, trade name, trademark, service mark, or loan information, the commissioner

14   shall not be required to prove actual damages as a result of the violation. Irreparable

15   harm shall be presumed. If the commissioner prevails in any action brought pursuant

16   to this Section, the commissioner shall be entitled to recover costs associated with

17   the action and reasonable attorney fees from the solicitor. Any action brought by the

18   commissioner pursuant to this Subsection shall be brought in the Nineteenth Judicial

19   District Court.

1   J. In addition to the remedies provided in Subsections H and I of this

2   Section, a solicitor who violates this Section shall be deemed to have violated the

3   false advertising law contained in R.S. 51:411 and the penalties contained in R.S.

4   51:411(E) may be enforced by the state attorney general.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Abstract: Allows the commissioner of the Office of Financial Institutions and the state attorney general to enforce provisions of solicitation law against violators.

Present law prohibits a solicitor from using a lender's name, trade name, service mark, or trademark in a solicitation for the offering of services or products to a consumer unless certain conditions are met.

Proposed law retains present law.

Proposed law allows the commissioner of the Office of Financial Institutions to use the enforcement powers granted to him in present law against a violating solicitor.

Proposed law provides that a violation of present law is considered a violation of the false advertising provisions of present law and allows the state attorney general to enforce the appropriate penalties provided in present law.

Proposed law provides that the commissioner is not required to prove actual damages when seeking to enjoin a solicitor from unlawfully using a name, trade name, trademark, service mark, or loan information, and provides that irreparable harm is to be presumed.

Proposed law allows the commissioner to be awarded costs and reasonable attorney fees if he prevails against a solicitor in violation of proposed law.

Proposed law requires any action arising out of a violation of proposed law to be brought in the 19th Judicial District Court.

(Adds R.S. 6:412.1(I) and (J))

Summary of Amendments Adopted by House

    The Committee Amendments Proposed by House Committee on Commerce to the original bill:

    1.   Allow the commissioner to enjoin unlawful use of certain information without being required to prove actual damages, and provides that irreparable harm is to be presumed.

    2.   Allow the commissioner to recover costs and reasonable attorney fees if he prevails in an action against a solicitor who violates proposed law.

3.   Require an action arising out of <u>proposed law</u> to be brought in the 19th Judicial District Court.