

Regular Session, 2011

HOUSE BILL NO. 221

BY REPRESENTATIVE ARNOLD AND SENATOR THOMPSON

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

1 AN ACT

2 To enact R.S. 6:412.1, relative to financial institutions; to provide for definitions; to prohibit
3 solicitations using a lender's name; to provide for required disclosures; to prohibit
4 solicitations using a lender's customer information; to provide an exception for
5 communications with current or former customers; to prohibit references on
6 envelopes and postcards; to provide an exception for solicitations comparing services
7 and products; to provide for injunctions; to provide for damages; to provide for
8 recovery of costs and attorney fees; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 6:412.1 is hereby enacted to read as follows:

11 §412.1. Soliciting using lender's name or customer loan information; restrictions;
12 injunction; damages; attorney fees

13 A. For purposes of this Section, the following terms shall have the following
14 meanings:

15 (1) "Lender" means a state or federally chartered bank, savings bank, credit
16 union, or savings and loan association, which is operating in Louisiana with one or
17 more physical branches or a main office, and any affiliate thereof, or any third party
18 operating with the consent of the lender. A person shall not be considered a lender
19 solely on the basis of the person's former employment with the lender.

20 (2) "Publicly available information" means any information that a bank,
21 credit union, or any affiliate has a reasonable basis to believe is lawfully made
22 available to the general public from any of the following:

23 (a) Federal, state, or local government records.

24 (b) Widely distributed media.

1 (c) Disclosures to the general public that are required to be made by federal,
2 state, or local law.

3 (3) "Solicit" or "solicitation" means the initiation of a communication to a
4 consumer for the purpose of encouraging the consumer to purchase property, goods,
5 or services or apply for an extension of credit. "Solicit" shall not include
6 communications initiated by the consumer or directed to the general public.

7 (4) "Solicitor" means any individual, firm, corporation, limited liability
8 company, partnership, organization, association, or other legal entity seeking to sell
9 or market products or services. The term "solicitor" shall not include a lender as
10 defined in this Subsection.

11 B.(1) No solicitor may use a lender's name, trade name, service mark, or
12 trademark in a solicitation for the offering of services or products to a consumer
13 without the written authorization of the lender, unless the oral, electronic, or written
14 solicitation discloses all of the following:

15 (a) The name, address, and telephone number of the solicitor making the
16 solicitation.

17 (b) A statement explaining that the solicitor making the solicitation is not
18 affiliated with the referenced lender.

19 (c) A statement that the solicitation is not authorized or sponsored by the
20 referenced lender.

21 (d) A statement that the referenced loan information was not provided by the
22 lender.

23 (2) The disclosures required by Paragraph (1) of this Subsection shall be
24 located on the front page of all written or electronic solicitations. The disclosures
25 shall be clear and conspicuous, in bold-faced type that is the same font size as is
26 predominantly used in the solicitation.

27 (3) There shall be a clear and audible recitation of the disclosures required
28 by Paragraph (1) of this Subsection at the beginning of all oral solicitations.

1 C. A solicitation for the purchase of services or products shall not contain
2 a loan number, loan amount, or other specific loan information that is not publicly
3 available information.

4 D.(1) A solicitor may not use a loan number, loan amount, or other specific
5 loan information that is publicly available information in a solicitation for the
6 purchase of services or products unless the oral, written, or electronic solicitation
7 discloses all of the following:

8 (a) The name, address, and telephone number of the solicitor making the
9 solicitation.

10 (b) A statement that the solicitor making the solicitation is not affiliated with
11 the lender.

12 (c) A statement that the solicitation is not authorized or sponsored by the
13 lender.

14 (d) A statement that the loan information referenced was not provided by the
15 lender and that the information was retrieved from public records.

16 (2) The disclosures required by Paragraph (1) of this Subsection shall be
17 located on the front page of all written or electronic solicitations. The disclosures
18 shall be clear and conspicuous, in bold-faced type that is the same font size as is
19 predominantly used in the solicitation.

20 (3) There shall be a clear and audible recitation of the disclosures required
21 by Paragraph (1) of this Subsection at the beginning of all oral solicitations.

22 E. This Section shall not apply to a lender who uses a loan number, loan
23 amount, or other specific loan information derived from the business relationship
24 between the lender and a current or former customer in communications with the
25 current or former customer of the lender.

26 F. Any reference to a lender and any reference to a loan number, loan
27 amount, or other specific loan information appearing on the outside of an envelope,
28 visible through the envelope window, or on a postcard in connection with any written
29 communication that includes or contains a solicitation for services or products, shall
30 be prohibited unless express consent is given by the lender to the solicitor.

1 G. It shall not be a violation of this Section for a solicitor or lender to use the
2 trade name of another lender in an advertisement for services or products to compare
3 the services or products offered by the other lender.

4 H. A lender may seek an injunction against a solicitor who violates this
5 Section to enjoin the unlawful use of the name, trade name, trademark, service mark,
6 or loan information. The lender seeking the injunction shall not be required to prove
7 actual damages as a result of the violation. Irreparable harm to the lender or owner
8 shall be presumed. The lender seeking the injunction may seek to recover actual
9 damages as a result of the violation. The lender, if it prevails in any action brought
10 pursuant to this Section, shall be entitled to recover costs associated with the action
11 and reasonable attorney fees from the solicitor.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____