

Regular Session, 2011

HOUSE BILL NO. 221

BY REPRESENTATIVE ARNOLD

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

BANKS/BANKING: Prohibits solicitations using a lender's name or customer information

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, or  
16 savings and loan association, which is operating in Louisiana with one or more  
17 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.

1           (2) "Publicly available information" means any information that a bank or  
2           any affiliate has a reasonable basis to believe is lawfully made available to the  
3           general public from any of the following:

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

5           (b) Widely distributed media.

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

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

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

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

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

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

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

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

28          (2) The disclosures required by Paragraph (1) of this Subsection shall be  
29          located on the front page of all written or electronic solicitations. The disclosures

1 shall be clear and conspicuous, in bold-faced type that is the same font size as is  
2 predominantly used in the solicitation.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 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)]

Arnold

HB No. 221

**Abstract:** Prohibits solicitations using a lender's name, trade name, service mark, trademark, or customer information without the written authorization of the lender, unless the solicitation contains certain disclosures.

Proposed law defines "lender" as a state or federally chartered bank, savings bank, or savings and loan association, which is operating in La. with one or more physical branches or a main office, and any affiliate thereof, or any third party operating with the consent of the lender.

Proposed law provides that a person shall not be considered a lender solely on the basis of the person's former employment with the lender.

Proposed law defines "publicly available information" as any information that a bank or any affiliate has a reasonable basis to believe is lawfully made available to the general public from any of the following:

- (1) Federal, state, or local government records.

- (2) Widely distributed media.
- (3) Disclosures to the general public that are required to be made by federal, state, or local law.

Proposed law defines "solicit" or "solicitation" as the initiation of a communication to a consumer for the purpose of encouraging the consumer to purchase property, goods, or services or apply for an extension of credit. "Solicit" shall not include communications initiated by the consumer or directed to the general public.

Proposed law defines "solicitor" as any individual, firm, corporation, limited liability company, partnership, organization, association, or other legal entity seeking to sell or market products or services. The term "solicitor" shall not include a "lender".

Proposed 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 without the written authorization of the lender, unless the oral, electronic, or written solicitation discloses all of the following:

- (1) The name, address, and telephone number of the solicitor making the solicitation.
- (2) A statement explaining that the solicitor making the solicitation is not affiliated with the referenced lender.
- (3) A statement that the solicitation is not authorized or sponsored by the referenced lender.
- (4) A statement that the referenced loan information was not provided by the lender.

Proposed law provides that the disclosures required by proposed law shall be located on the front page of all written or electronic solicitations. The disclosures shall be clear and conspicuous, in bold-faced type that is the same font size as is predominantly used in the solicitation.

Proposed law provides that there shall be a clear and audible recitation of the disclosures required by proposed law at the beginning of all oral solicitations.

Proposed law prohibits a solicitation for the purchase of services or products from containing a loan number, loan amount, or other specific loan information that is not publicly available information.

Proposed law prohibits a solicitor from using a loan number, loan amount, or other specific loan information that is publicly available information in a solicitation for the purchase of services or products unless the oral, written, or electronic solicitation discloses all of the following:

- (1) The name, address, and telephone number of the solicitor making the solicitation.
- (2) A statement that the solicitor making the solicitation is not affiliated with the lender.
- (3) A statement that the solicitation is not authorized or sponsored by the lender.
- (4) A statement that the loan information referenced was not provided by the lender and that the information was retrieved from public records.

Proposed law provides that the disclosures required by proposed law shall be located on the front page of all written or electronic solicitations. The disclosures shall be clear and

conspicuous, in bold-faced type that is the same font size as is predominantly used in the solicitation.

Proposed law provides that there shall be a clear and audible recitation of the disclosures required by proposed law at the beginning of all oral solicitations.

Proposed law shall not apply to a lender who uses a loan number, loan amount, or other specific loan information derived from the business relationship between the lender and a current or former customer in communications with the current or former customer of the lender.

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

Proposed law provides that it shall not be a violation of proposed law for a solicitor or lender to use the trade name of another lender in an advertisement for services or products to compare the services or products offered by the other lender.

Proposed law authorizes a lender to seek an injunction against a solicitor who violates proposed law to enjoin the unlawful use of the name, trade name, trademark, service mark, or loan information.

Proposed law provides that the lender seeking the injunction shall not be required to prove actual damages as a result of the violation. Irreparable harm to the lender or owner shall be presumed.

Proposed law provides that the lender seeking the injunction may also seek to recover actual damages as a result of the violation.

Proposed law further provides that the lender, if it prevails in any action brought pursuant to proposed law, shall be entitled to recover costs associated with the action and reasonable attorney fees from the solicitor.

(Adds R.S. 6:412.1)

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Clarifies that a solicitation for the purchase of services or products shall not contain a loan number, loan amount, or other specific loan information that is not publicly available.
2. Deletes provision allowing an existing lender to report violations to the commissioner of the Office of Financial Institutions.
3. Deletes provision authorizing the commissioner of the Office of Financial Institutions to direct violators to cease and desist from making oral, written, or electronic solicitations.
4. Makes technical changes.