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AN ACT

RELATING TO THE SOLICITATION OF SERVICES OR PRODUCTS;  
PROHIBITING SOLICITORS FROM USING CERTAIN LOAN INFORMATION OR  
A TRADE NAME OR TRADEMARK OF A LENDER OR A TRADE NAME OR  
TRADEMARK CONFUSINGLY SIMILAR TO THAT OF A LENDER; PROVIDING  
A CAUSE OF ACTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SOLICITATIONS USING LOAN INFORMATION--  
RESTRICTION--CAUSE OF ACTION.--

A. A person shall not reference the trade name or  
trademark of a lender or a trade name or trademark  
confusingly similar to that of a lender in a solicitation  
offering services or products without the consent of the  
lender, unless the solicitation clearly and conspicuously  
states the following in close proximity to and in the same or  
larger point type as the first and the most prominent use of  
a lender's trade name or trademark:

(1) the name, address and telephone number  
of the person making the solicitation;

(2) that the person making the solicitation  
is not affiliated with the lender;

(3) that the solicitation is not authorized  
or sponsored by the lender; and

(4) that the loan information referenced was

1 not provided by the lender.

2 B. A person shall not reference a loan number,  
3 loan amount or other specific loan information that is not  
4 publicly available in a solicitation offering services or  
5 products, unless the information is included in a  
6 communication from a lender or an affiliate of a lender to a  
7 current customer of the lender or a person who was a customer  
8 of the lender during the eighteen months immediately  
9 preceding the solicitation.

10 C. Except as provided in Subsection D of this  
11 section, a person shall not reference a loan number, loan  
12 amount or other specific loan information that is publicly  
13 available in a solicitation offering services or products,  
14 unless the solicitation clearly and conspicuously states the  
15 following in close proximity to and in the same or larger  
16 point type as the first and the most prominent use of the  
17 loan number, loan amount or other specific loan information:

18 (1) the name, address and telephone number  
19 of the person making the solicitation;

20 (2) that the person making the solicitation  
21 is not affiliated with the lender;

22 (3) that the solicitation is not authorized  
23 or sponsored by the lender; and

24 (4) that the loan information referenced was  
25 not provided by the lender.

1           D. Subsection C of this section does not apply to  
2 a communication by a lender or an affiliate of a lender with  
3 a current customer of the lender or with a person who was a  
4 customer of the lender during the eighteen months immediately  
5 preceding the communication.

6           E. A person shall not use the name of a lender or  
7 a name similar to that of a lender in a solicitation directed  
8 to consumers if that use could cause a reasonable person to  
9 be confused, mistaken or deceived as to:

10                   (1) the lender's sponsorship, affiliation,  
11 connection or association with the person using the name; or

12                   (2) the lender's approval or endorsement of  
13 the person using the name or the person's services or  
14 products.

15           F. Any reference to an outstanding loan, including  
16 the name of the lender, the loan number, the loan amount or  
17 other specific information about the loan that appears on the  
18 outside of an envelope, that is visible through the envelope  
19 window or that appears on a postcard in connection with any  
20 written communication that includes or contains a  
21 solicitation for goods or services, is prohibited without the  
22 consent of the lender.

23           G. The prohibitions of this section do not apply  
24 to the use by a person of the trade name of another lender in  
25 an advertisement for services or products that compares the

1 services or products offered by the other lender.

2 H. A lender or owner of a trade name or trademark  
3 may seek an injunction in a state district court against a  
4 person who violates this section to stop the unlawful use of  
5 the trade name, trademark or loan information. In such an  
6 action:

7 (1) the person seeking the injunction shall  
8 not have to prove actual damage as a result of the violation;  
9 and

10 (2) irreparable harm and interim harm to the  
11 lender or owner shall be presumed.

12 I. A lender or owner seeking an injunction under  
13 Subsection H of this section may, in the same action, seek to  
14 recover actual damages and any profits the defendant has  
15 accrued as a result of a violation of this section. The  
16 prevailing party in an action brought pursuant to this  
17 section may recover costs associated with the action and  
18 reasonable attorney fees from the other party.

19 J. As used in this section:

20 (1) "affiliate" means a business entity  
21 that, directly or indirectly through one or more  
22 intermediaries controls, is controlled by or is under common  
23 control with another business entity; and

24 (2) "lender" means an insured state or  
25 national bank, a state or federal savings and loan

1 association or savings bank, a state or federal credit union,  
2 a mortgage loan company, an escrow company or any other  
3 person who makes loans in this state or a holder of a loan  
4 and any affiliate, or any third party operating with the  
5 consent of the lender. \_\_\_\_\_

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