

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH50519-LD-53 (02/07)

Short Title: Option to Stop Junk Mail. (Public)

Sponsors: Representative Fisher.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A PROGRAM THAT PROVIDES POSTAL PATRONS
3 WITH THE OPTION TO REJECT UNSOLICITED COMMERCIAL MAILINGS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 75 of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 6.

8 "Unsolicited Commercial Mailings.

9 "§ 75-120. Short title.

10 This Article may be cited as the "North Carolina Junk Mail Opt-Out List Act".

11 "§ 75-121. Legislative findings.

12 The General Assembly makes the following findings:

- 13 (1) Unsolicited bulk mail ("junk mail") now represents a major portion of
14 the budget and workload of the United States Postal Service, with over
15 90 billion pieces delivered per year, and annually accounts for millions
16 of pounds of trash in North Carolina and the destruction of 100 million
17 trees nationwide for paper pulp.
18 (2) The proliferation of junk mail has included a sharp rise in the number
19 of deceptively packaged commercial solicitations, disguised as official
20 government correspondence, that have been used to perpetrate fraud
21 against the elderly and the unsophisticated.
22 (3) Many citizens of this State view junk mail as an imposition on their
23 time and an invasion of their privacy.
24 (4) Junk mail is a large, unnecessary source of solid waste and imposes an
25 unnecessary burden on the environment for which taxpayers bear the
26 cost.

- 1 (5) Individual rights and commercial freedom of speech should be
2 balanced in a way that accommodates both individual choice and
3 legitimate marketing practices.
- 4 (6) Although political organizations and charitable organizations, as
5 defined in G.S. 131F-2, are exempt from this Article in order not to
6 hamper the free flow of ideas in our democracy. The General
7 Assembly encourages such organizations to voluntarily comply with
8 this Article when possible.
- 9 (7) It is in the public interest to establish a mechanism under which the
10 individual citizens of this State can decide whether or not to receive
11 unsolicited bulk mail.

12 **"§ 75-122. Definitions.**

13 As used in this Article, the following definitions apply:

- 14 (1) Bulk mailer. – A person or entity that sends, on behalf of itself or
15 another person or entity, substantially similar pieces of mail to 25 or
16 more postal patrons.
- 17 (2) Conforming consolidated junk mail opt-out list. – Any database that
18 includes addresses of postal patrons that do not wish to receive junk
19 mail, if such database has been updated within the immediately
20 preceding 30 days to include all of the addresses on the North Carolina
21 Junk Mail Opt-Out List.
- 22 (3) Conforming list broker. – Any person or entity that provides lists for
23 the purpose of bulk mailings, if such lists remove, at a minimum of
24 every 30 days, any addresses that are included on the North Carolina
25 Junk Mail Opt-Out List.
- 26 (4) Designated agent. – The party with which the North Carolina Utilities
27 Commission contracts under G.S. 75-124(b).
- 28 (5) Established business relationship. – A relationship that satisfies all of
29 the following conditions:
- 30 a. Was formed, prior to the sending of junk mail, through a
31 voluntary, two-way communication between a seller or bulk
32 mailer and a postal patron, with or without consideration, on the
33 basis of an application, purchase, ongoing contractual
34 agreement, or commercial transaction between the parties
35 regarding products or services offered by such seller or bulk
36 mailer.
- 37 b. Has not been previously terminated by either party.
- 38 c. Currently exists or has existed within the immediately
39 preceding 18 months.
- 40 'Established business relationship', with respect to a financial
41 institution or affiliate, as those terms are defined in section 527 of the
42 federal Gramm-Leach-Bliley Financial Modernization Act, Pub. L.
43 106-102, 113 Stat, 1388, includes any situation in which a financial
44 institution or affiliate makes bulk mailings related to other financial

1 services offered, if the financial institution or affiliate is subject to the
2 requirements regarding privacy of Title V of the federal
3 Gramm-Leach-Bliley Financial Modernization Act, Pub. L. 106-102,
4 113 Stat. 1388, and the financial institution or affiliate regularly
5 conducts business in North Carolina.

6 (6) Junk mail. – Any printed matter sent by mail for the purpose of
7 encouraging the purchase or rental of, or investment in, property,
8 goods, or services. 'Junk mail' does not include any of the following
9 communications:

10 a. To any postal patron with that postal patron's prior express
11 invitation or permission.

12 b. By or on behalf of any person or entity with whom a postal
13 patron has had a business contact within the past 180 days or a
14 current business or personal relationships.

15 c. By or on behalf of a charitable organization, as defined in
16 G.S. 131F-2.

17 d. By or on behalf of any entity over which a federal agency has
18 regulatory authority, to the extent that:

19 1. Subject to authority, the entity is required to maintain a
20 license, permit, or certificate to sell or provide the
21 merchandise being offered through bulk mail; and

22 2. The entity is required by law or rule to develop and
23 maintain a no-mail list.

24 e. By a natural person responding to a referral, or working from
25 his or her primary residence, or a person licensed or registered
26 in North Carolina to carry on a trade, occupation, or profession
27 who is setting or attempting to set an appointment for actions
28 relating to that licensed trade, occupation, or profession within
29 North Carolina or counties contiguous to North Carolina.

30 (7) Postal patron. – Any person having a mailing address in North
31 Carolina, as shown by records of the United States Postal Service.

32 **"§ 75-123. Unlawful to send junk mail to postal patrons on the North Carolina**
33 **Junk Mail Opt-Out List; requirements for junk mail generally.**

34 (a) No person or entity shall send or cause to be sent any junk mail to the address
35 of any postal patron who has added that address to the North Carolina Junk Mail
36 Opt-Out List in accordance with rules adapted under G.S. 75-124.

37 (b) Any person or entity that sends junk mail to the address of any postal patron
38 in this State shall register in accordance with G.S. 75-124(c)(2), shall provide a current
39 business name, business address, e-mail address, if available, and telephone number
40 when initially registering for the North Carolina Junk Mail Opt-Out List, shall update
41 this information when any change in this information occurs, and shall pay a registration
42 fee in accordance with G.S. 75-124(c)(2).

43 (c) Any person or entity that desires to send junk mail shall update its copy of the
44 North Carolina Junk Mail Opt-Out List, or a list obtained from a conforming list broker

1 within 30 days after the beginning of every calendar quarter no later than January 1,
2 2008, or upon the initial availability and accessibility of the North Carolina Junk Mail
3 Opt-Out List, whichever is earlier.

4 **"§ 75-124. Establishment and operation of a North Carolina Junk Mail Opt-Out**
5 **List; rules.**

6 (a) The North Carolina Junk Mail Opt-Out List Program is created for the
7 purpose of establishing a database to use when verifying whether a postal patron in this
8 State has given notice, in accordance with rules adopted under subdivision (2) of
9 subsection (c) of this section, of such postal patron's objection to receiving junk mail.
10 The program shall be administered by the North Carolina Utilities Commission.

11 (b) No later than January 1, 2008, the North Carolina Utilities Commission shall
12 contract with a designated agent, which shall maintain an Internet Web site and database
13 containing the North Carolina Junk Mail Opt-Out List. If no more than one entity bids
14 on the contract, the North Carolina Utilities Commission may award such contract at its
15 discretion.

16 (c) No later than January 1, 2008, the designated agent using the designated State
17 Internet Web site shall develop and maintain the North Carolina Junk Mail Opt-Out List
18 database with information provided by postal patrons. The North Carolina Utilities
19 Commission shall establish, by rule, guidelines for the designated agent for the
20 development and maintenance of the North Carolina Junk Mail Opt-Out List so that the
21 Junk Mail Opt-Out List can easily be accessed by any person or entity desiring to send
22 junk mail, and by any State and local law enforcement agency. As soon as practicable,
23 the North Carolina Utilities Commission shall adopt rules that provide for all of the
24 following:

- 25 (1) Specify that there shall be no cost for a postal patron to provide
26 notification to the designated agent that such postal patron objects to
27 receiving junk mail.
- 28 (2) Specify that any person or entity that wishes to send junk mail or
29 otherwise access the database of addresses contained in the North
30 Carolina Junk Mail Opt-Out List database shall pay an annual
31 registration fee not to exceed five hundred dollars (\$500.00). The
32 North Carolina Utilities Commission shall determine such fee on a
33 sliding scale so that any person or entity with more than 1,000
34 employees shall pay the maximum fee and any person or entity with
35 fewer than five employees, any conforming list broker, or any
36 nonprofit corporation shall pay no fee. Moneys collected from these
37 fees shall be used to pay the direct and indirect costs related to the
38 creation and operation of the North Carolina Junk Mail Opt-Out List.
39 Moneys from such fees shall be collected by and paid directly to the
40 designated agent. The North Carolina Utilities Commission may
41 reduce the fees annually based on the revenue history of the fees
42 received by the designated agent. The designated agent shall provide a
43 means for registering online and paying registration fees under this
44 subdivision by credit card.

- 1 (3) Specify that the method by which each postal patron may give notice
2 to the designated agent of his or her objection to receiving junk mail,
3 or may revoke such notice, shall be exclusively by entering the address
4 of the postal patron directly into the database via the designated
5 Internet Web site or by calling a designated statewide, toll-free
6 telephone number maintained by the designated agent as part of the
7 North Carolina Junk Mail Opt-Out List.
- 8 (4) Specify that the date of every notice received in accordance with
9 subdivision (3) of this subsection be recorded and included as part of
10 the information in the North Carolina Junk Mail Opt-Out List.
- 11 (5) Require the designated agent to provide updated information about the
12 Junk Mail Opt-Out List Program on the designated Web site, subject to
13 the supervision of the North Carolina Utilities Commission.
- 14 (6) Prohibit the designated agent or any person or entity collecting
15 information to be transmitted to the designated agent from making any
16 use or distribution of names or addresses contained in the Junk Mail
17 Opt-Out List except as expressly authorized under this Article.
- 18 (7) Specify the method by which any addition, deletion, change, and
19 modification shall be made to the North Carolina Junk Mail Opt-Out
20 List database and how any update of the database shall be made
21 available to a person or entity desiring such update. Any such method
22 shall include provisions to remove from the North Carolina Junk Mail
23 Opt-Out List, on at least an annual basis, any address from which the
24 original postal patron has moved away.
- 25 (8) Require the designated agent to maintain an automated, online
26 complaint system for a postal patron to report any suspected violation
27 over the Internet Web site. The automated, online complaint system
28 shall have the capability to collect, sort, and report a suspected
29 violation to the appropriate State enforcement agency electronically
30 for enforcement purposes.
- 31 (9) Specify that the Junk Mail Opt-Out List shall be available online at the
32 Internet Web site to a person or entity desiring to send junk mail if the
33 person or entity has registered and paid a registration fee in accordance
34 with subsection (b) of G.S. 75-123 and subdivision (2) of this
35 subsection. The list shall be available in a text or other compatible
36 format, at the discretion of the North Carolina Utilities Commission,
37 but shall allow a bulk mailer to select and sort by specific zip codes.
- 38 (10) Specify such other matters relating to the database as the North
39 Carolina Utilities Commission deems necessary or desirable to
40 implement this Article.

41 (d) If the federal government establishes one or more official databases of postal
42 patrons who object to receiving junk mail, the designated agent may provide appropriate
43 data from the official North Carolina Junk Mail Opt-Out List exclusively for inclusion
44 in an official National Do-Not-Mail database. To the extent allowed by federal law, the

1 designated agent shall ensure that the North Carolina Junk Mail Opt-Out List includes
2 that portion of an official National Do-Not-Mail database that relates to North Carolina.

3 (e) The State shall not be liable to any person for gathering, managing, or using
4 information in the North Carolina Junk Mail Opt-Out List database pursuant to this
5 Article and for enforcing the provisions of this Article.

6 (f) The designated agent shall not be liable to any person for performing the
7 duties of the designated agent under this Article unless, and only to the extent that, the
8 designated agent commits a willful and wanton act or omission.

9 (g) As soon as practicable, the designated agent shall update the database, on an
10 ongoing basis, with information provided by postal patrons and the United States Postal
11 Service.

12 (h) No person shall place the address of another person on the North Carolina
13 Junk Mail Opt-Out List without the person's permission.

14 **"§ 75-125. Enforcement; penalties; defenses.**

15 (a) A violation of any provision of this Article constitutes a deceptive trade
16 practice under G.S. 75-1.1. No State enforcement action under this Article may be
17 brought against a person or entity for fewer than three violations per month.

18 (b) Each of the following is a defense for a violation of this Article:

19 (1) The person or entity has otherwise fully complied with this Article and
20 has established and implemented, prior to the violation, written
21 practices and procedures to effectively prevent the sending of junk
22 mail in violation of this Article.

23 (2) The violation resulted from an error in transcription or other technical
24 defect, not the fault of the person or entity or equipment or software
25 within its control, that caused the information in the North Carolina
26 Junk Mail Opt-Out List as received by the person or entity to differ
27 from the information that was or should have been included in the
28 Junk Mail Opt-Out List as transmitted by the designated agent.

29 (c) The remedies, duties, prohibitions, and penalties of this section are not
30 exclusive and are in addition to any other cause of action, remedy, and penalty provided
31 by law.

32 (d) No provider of address information or address lists shall be held liable for
33 violations of this Article committed by another person or entity.

34 **"§ 75-126. Severability.**

35 If any provision of this Article or the application thereof to any person or
36 circumstances is held invalid, such invalidity shall not affect other provisions or
37 applications of this Article that can be given effect without the invalid provision or
38 application, and to this end the provisions of this Article are severable."

39 **SECTION 2.** This act becomes effective January 1, 2008.