

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 1699

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

Sponsors: Representatives Fisher; Alexander, Faison, Harrison, and Samuelson.

Referred to: Judiciary I.

April 19, 2007

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.
- 27 (5) Individual rights and commercial freedom of speech should be  
28 balanced in a way that accommodates both individual choice and  
29 legitimate marketing practices.

1           (6) Although political organizations and charitable organizations, as  
2 defined in G.S. 131F-2, are exempt from this Article in order not to  
3 hamper the free flow of ideas in our democracy. The General  
4 Assembly encourages such organizations to voluntarily comply with  
5 this Article when possible.

6           (7) It is in the public interest to establish a mechanism under which the  
7 individual citizens of this State can decide whether or not to receive  
8 unsolicited bulk mail.

9 **"§ 75-122. Definitions.**

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

11           (1) Bulk mailer. – A person or entity that sends, on behalf of itself or  
12 another person or entity, substantially similar pieces of mail to 25 or  
13 more postal patrons.

14           (2) Conforming consolidated junk mail opt-out list. – Any database that  
15 includes addresses of postal patrons that do not wish to receive junk  
16 mail, if such database has been updated within the immediately  
17 preceding 30 days to include all of the addresses on the North Carolina  
18 Junk Mail Opt-Out List.

19           (3) Conforming list broker. – Any person or entity that provides lists for  
20 the purpose of bulk mailings, if such lists remove, at a minimum of  
21 every 30 days, any addresses that are included on the North Carolina  
22 Junk Mail Opt-Out List.

23           (4) Designated agent. – The party with which the North Carolina Utilities  
24 Commission contracts under G.S. 75-124(b).

25           (5) Established business relationship. – A relationship that satisfies all of  
26 the following conditions:

27           a. Was formed, prior to the sending of junk mail, through a  
28 voluntary, two-way communication between a seller or bulk  
29 mailer and a postal patron, with or without consideration, on the  
30 basis of an application, purchase, ongoing contractual  
31 agreement, or commercial transaction between the parties  
32 regarding products or services offered by such seller or bulk  
33 mailer.

34           b. Has not been previously terminated by either party.

35           c. Currently exists or has existed within the immediately  
36 preceding 18 months.

37 'Established business relationship', with respect to a financial  
38 institution or affiliate, as those terms are defined in section 527 of the  
39 federal Gramm-Leach-Bliley Financial Modernization Act, Pub. L.  
40 106-102, 113 Stat, 1388, includes any situation in which a financial  
41 institution or affiliate makes bulk mailings related to other financial  
42 services offered, if the financial institution or affiliate is subject to the  
43 requirements regarding privacy of Title V of the federal  
44 Gramm-Leach-Bliley Financial Modernization Act, Pub. L. 106-102,

1 113 Stat, 1388, and the financial institution or affiliate regularly  
2 conducts business in North Carolina.

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

7 a. To any postal patron with that postal patron's prior express  
8 invitation or permission.

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

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

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

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

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

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

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

29 **§ 75-123. Unlawful to send junk mail to postal patrons on the North Carolina**  
30 **Junk Mail Opt-Out List; requirements for junk mail generally.**

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

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

40 (c) Any person or entity that desires to send junk mail shall update its copy of the  
41 North Carolina Junk Mail Opt-Out List, or a list obtained from a conforming list broker  
42 within 30 days after the beginning of every calendar quarter no later than January 1,  
43 2008, or upon the initial availability and accessibility of the North Carolina Junk Mail  
44 Opt-Out List, whichever is earlier.

1 **"§ 75-124. Establishment and operation of a North Carolina Junk Mail Opt-Out**  
2 **List; rules.**

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

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

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

22 (1) Specify that there shall be no cost for a postal patron to provide  
23 notification to the designated agent that such postal patron objects to  
24 receiving junk mail.

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

42 (3) Specify that the method by which each postal patron may give notice  
43 to the designated agent of his or her objection to receiving junk mail,  
44 or may revoke such notice, shall be exclusively by entering the address

1 of the postal patron directly into the database via the designated  
2 Internet Web site or by calling a designated statewide, toll-free  
3 telephone number maintained by the designated agent as part of the  
4 North Carolina Junk Mail Opt-Out List.

5 (4) Specify that the date of every notice received in accordance with  
6 subdivision (3) of this subsection be recorded and included as part of  
7 the information in the North Carolina Junk Mail Opt-Out List.

8 (5) Require the designated agent to provide updated information about the  
9 Junk Mail Opt-Out List Program on the designated Web site, subject to  
10 the supervision of the North Carolina Utilities Commission.

11 (6) Prohibit the designated agent or any person or entity collecting  
12 information to be transmitted to the designated agent from making any  
13 use or distribution of names or addresses contained in the Junk Mail  
14 Opt-Out List except as expressly authorized under this Article.

15 (7) Specify the method by which any addition, deletion, change, and  
16 modification shall be made to the North Carolina Junk Mail Opt-Out  
17 List database and how any update of the database shall be made  
18 available to a person or entity desiring such update. Any such method  
19 shall include provisions to remove from the North Carolina Junk Mail  
20 Opt-Out List, on at least an annual basis, any address from which the  
21 original postal patron has moved away.

22 (8) Require the designated agent to maintain an automated, online  
23 complaint system for a postal patron to report any suspected violation  
24 over the Internet Web site. The automated, online complaint system  
25 shall have the capability to collect, sort, and report a suspected  
26 violation to the appropriate State enforcement agency electronically  
27 for enforcement purposes.

28 (9) Specify that the Junk Mail Opt-Out List shall be available online at the  
29 Internet Web site to a person or entity desiring to send junk mail if the  
30 person or entity has registered and paid a registration fee in accordance  
31 with subsection (b) of G.S. 75-123 and subdivision (2) of this  
32 subsection. The list shall be available in a text or other compatible  
33 format, at the discretion of the North Carolina Utilities Commission,  
34 but shall allow a bulk mailer to select and sort by specific zip codes.

35 (10) Specify such other matters relating to the database as the North  
36 Carolina Utilities Commission deems necessary or desirable to  
37 implement this Article.

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

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

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

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

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

12 **"§ 75-125. Enforcement; penalties; defenses.**

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

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

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

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

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

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

32 **"§ 75-126. Severability.**

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

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