



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3555

by Rep. Sue Scherer

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.891 new

Creates the Junk Mail Opt-Out List Act. Makes legislative declarations. Defines terms including bulk mailer, junk mail, and postal patron. Provides that by July 1, 2020, the Attorney General shall establish and provide for the operation of the Illinois Junk Mail Opt-Out List, containing the addresses of postal patrons who have given notice that they do not wish to receive junk mail. Provides that no person shall send junk mail to a postal patron who has registered for the Opt-Out List. Provides that any person who wishes to send junk mail shall consult the Opt-Out List each calendar quarter. Provides that mail sent by a small business, a political entity, or a charitable entity exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or by a business to its customers, is not junk mail. Provides that the civil penalties for violations are set on a sliding scale. Provides that the State does not have any liability to a person for any failures in enforcement of the Act. Provides that the Attorney General shall provide by rule for fees on a sliding scale for persons and entities that want to send junk mail, but who will honor the List. Provides for: referral and investigation of complaints; inclusion in the Opt-Out List; violations; remedies; exemptions; and other matters. Creates the Junk Mail Opt-Out List Fund as a special fund, provides that fees and civil penalties shall be deposited into the Fund and that moneys in the Fund shall be used for implementation, administration, and enforcement of the new Act, and amends the State Finance Act to list the new Fund as a special fund. Effective immediately.

LRB101 10574 JLS 55680 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Junk
5 Mail Opt-Out List Act.

6 Section 5. Legislative declaration. The General Assembly
7 hereby finds, determines, and declares that:

8 (1) Unsolicited bulk mail ("junk mail") now represents a
9 major portion of the budget and workload of the United States
10 Postal Service, with over 90 billion pieces delivered per year,
11 and, based on data supplied by the United States Environmental
12 Protection Agency and the National Solid Waste Management
13 Association requiring disposal at a cost of millions of
14 dollars, and the destruction of 100 million trees nationwide
15 for paper pulp.

16 (2) The proliferation of junk mail has included a sharp
17 rise in the number of deceptively packaged commercial
18 solicitations that have been used to perpetrate fraud against
19 the elderly and the unsophisticated.

20 (3) Many citizens of this State view junk mail as an
21 imposition on their time, an invasion of their privacy, and an
22 environmental sacrilege.

23 (4) Individual rights and commercial freedom of speech

1 should be balanced in a way that accommodates both individual
2 choice and legitimate marketing practices.

3 (5) Although small businesses and charitable and political
4 organizations are exempt from this Act in order not to hamper
5 the free flow of ideas in our democracy, the General Assembly
6 encourages those organizations to voluntarily comply with this
7 Act when possible.

8 (6) It is in the public interest to establish a mechanism
9 under which the residents of this State can decide whether to
10 receive junk mail.

11 Section 10. Definitions. As used in this Act:

12 "Bulk mailer" means a person that sends, on behalf of
13 itself or another person, substantially similar pieces of mail
14 to 25 or more postal patrons.

15 "Conforming consolidated junk mail opt-out list" means any
16 database that includes addresses of postal patrons that do not
17 wish to receive junk mail, if such database has been updated
18 within the immediately preceding 30 days to include all of the
19 addresses on the Illinois Junk Mail Opt-Out List.

20 "Conforming list broker" means any person that provides
21 lists for the purpose of bulk mailings, if every address that
22 is included on the Illinois Junk Mail Opt-Out List has been
23 removed from those lists at least every 30 days.

24 "Designated agent" means the party with which the Illinois
25 Attorney General contracts under this Act.

1 "Established business relationship" means a relationship
2 that:

3 (i) was formed, prior to the sending of junk mail,
4 through a voluntary, two-way communication between a
5 seller or bulk mailer and a postal patron, with or without
6 consideration, on the basis of an application, purchase,
7 ongoing contractual agreement, or commercial transaction
8 between the parties regarding products or services offered
9 by the seller or bulk mailer;

10 (ii) has not been previously terminated by either
11 party; and

12 (iii) currently exists or has existed within the
13 immediately preceding 180 days.

14 "Established business relationship", with respect to a
15 financial institution, as defined in Section 527 of the federal
16 Gramm-Leach-Bliley Act (12 U.S.C. 1811), or an affiliate
17 thereof, includes any situation in which a financial
18 institution or affiliate makes bulk mailings related to other
19 financial services offered, if the financial institution or
20 affiliate is subject to the requirements regarding privacy of
21 Title V of the federal Gramm-Leach-Bliley Act (12 U.S.C. 1811)
22 and the financial institution or affiliate regularly conducts
23 business in Illinois.

24 "Junk mail" means any printed matter sent by mail for the
25 purpose of encouraging the purchase or rental of, or investment
26 in, property, goods, or services; however "junk mail" does not

1 include communications:

2 (i) to any postal patron with that postal patron's
3 prior express invitation or permission;

4 (ii) by or on behalf of any person with whom a postal
5 patron has an established business relationship;

6 (iii) by or on behalf of a small business;

7 (iv) by or on behalf of an entity exempt from federal
8 income tax under Section 501(c)(3) of the federal Internal
9 Revenue Code of 1986 while such entity is engaged in
10 fundraising to support the charitable purpose for which the
11 entity was established;

12 (v) by or on behalf of a political party, political
13 committee, campaign committee, candidate committee, or
14 entity organized under Section 527 of the federal Internal
15 Revenue Code of 1986 while such entity is engaged in
16 political speech or fundraising for political purposes; or

17 (vi) by a natural person responding to a referral, or
18 working from his or her primary residence, or a person
19 licensed or registered in Illinois to carry on a trade,
20 occupation, or profession who is setting or attempting to
21 set an appointment for actions relating to that licensed
22 trade, occupation, or profession within Illinois or
23 counties contiguous to Illinois.

24 (i) "Postal patron" means any person having a mailing
25 address in Illinois, as shown by records of the United States
26 Postal Service.

1 (j) "Small business" means a business entity with 3 or
2 fewer employees.

3 Section 15. Unlawful to send junk mail to postal patrons on
4 the Illinois Junk Mail Opt-Out List; requirements for junk mail
5 generally.

6 (a) No person shall send or cause to be sent any junk mail
7 to the address of any postal patron who has added that address
8 to the Illinois Junk Mail Opt-Out List in accordance with rules
9 promulgated under this Act.

10 (b) A person that sends junk mail to the address of any
11 postal patron shall register in accordance with Section 20.

12 (c) On or after July 1, 2020, or upon the initial
13 availability and accessibility of the Illinois Junk Mail
14 Opt-Out List, whichever is earlier, a person that desires to
15 send junk mail shall update the person's copy of the Illinois
16 Junk Mail Opt-Out List, conforming consolidated junk mail
17 opt-out list, or a list obtained from a conforming list broker
18 within 30 days after the beginning of every calendar quarter.

19 Section 20. Establishment and operation of the Illinois
20 Junk Mail Opt-Out List; rules and registration.

21 (a) The Illinois Junk Mail Opt-Out List program is hereby
22 created for the purpose of establishing a database to use when
23 verifying postal patrons who have given notice, in accordance
24 with rules promulgated under of subsection (d) of this Section,

1 of those postal patrons' objections to receiving junk mail. The
2 Attorney General shall administer the program.

3 (b) Not later than July 1, 2020, the Attorney General shall
4 contract with a designated agent, which shall maintain the
5 website and database containing the Illinois Junk Mail Opt-Out
6 List. If no more than one entity bids on the contract, the
7 Attorney General may award the contract at its discretion.

8 (c) Not later than July 1, 2020, the designated agent,
9 using the designated State Internet website, shall develop and
10 maintain the Illinois Junk Mail Opt-Out List database with
11 information provided by postal patrons.

12 (d) The Attorney General shall establish, by rule,
13 guidelines for the designated agent for the development and
14 maintenance of the Illinois Junk Mail Opt-Out List so that the
15 Junk Mail Opt-Out List can easily be accessed by persons
16 desiring to send junk mail and by State and local law
17 enforcement agencies. As soon as practicable, the Attorney
18 General shall promulgate rules that:

19 (i) specify that there shall be no cost for a postal
20 patron to provide notification to the designated agent that
21 the postal patron objects to receiving junk mail;

22 (ii) specify that there shall be an annual registration
23 fee of not more than \$500 for persons or entities that wish
24 to send junk mail or otherwise access the database of
25 addresses contained in the Illinois Junk Mail Opt-Out List
26 database. The Attorney General shall determine the fee on a

1 sliding scale so that persons or entities with fewer than 5
2 employees shall pay no fee. In addition, there shall be no
3 fee charged to conforming list brokers or nonprofit
4 corporations, as defined in the General Not for Profit
5 Corporation Act of 1986. The maximum fee shall be charged
6 only to persons with more than 1,000 employees. Moneys
7 collected from the fees shall cover the direct and indirect
8 costs related to the creation and operation of the Illinois
9 Junk Mail Opt-Out List. Moneys from the fees shall be
10 collected by and paid directly to the designated agent. The
11 Attorney General shall annually adjust the fees below the
12 stated maximum based on the revenue history of the fees
13 received by the designated agent. The designated agent
14 shall provide means for online registration and credit card
15 payment of fees charged pursuant to this subsection (d).
16 Each person who registers shall provide a current business
17 name, business address, email address if available, and
18 telephone number when initially registering for the Junk
19 Mail Opt-Out List. This information shall be updated when
20 changes occur;

21 (iii) specify that the method by which each postal
22 patron may give notice to the designated agent of his or
23 her objection to receiving junk mail, or may revoke the
24 notice, shall be exclusively by entering the address of the
25 postal patron directly into the database via the designated
26 State Internet website or by calling a designated

1 statewide, toll-free telephone number maintained by the
2 designated agent as a part of the Illinois Junk Mail
3 Opt-Out List;

4 (iv) specify that the date of every notice received in
5 accordance with this subsection (d) be recorded and
6 included as part of the information in the Junk Mail
7 Opt-Out List;

8 (v) require the designated agent to provide updated
9 information about the Illinois Junk Mail Opt-Out List
10 program on the designated State website, subject to
11 supervision by the Attorney General;

12 (vi) prohibit the designated agent or any person
13 collecting information to be transmitted to the designated
14 agent from making any use or distribution of names or
15 addresses contained in the Junk Mail Opt-Out List except as
16 expressly authorized under this Act;

17 (vii) specify the methods by which additions,
18 deletions, changes, and modifications shall be made to the
19 Illinois Junk Mail Opt-Out List database and how updates of
20 the database shall be made available to persons desiring
21 the updates. The methods shall include provisions to remove
22 from the Illinois Junk Mail Opt-Out List, on at least an
23 annual basis, every address away from which the original
24 postal patron has moved;

25 (viii) require the designated agent to maintain an
26 automated online complaint system for postal patrons to

1 report suspected violations over the Internet website. The
2 automated online complaint system shall have the
3 capability to collect, sort, and report suspected
4 violations to the Attorney General electronically for
5 enforcement purposes;

6 (ix) specify that the Junk Mail Opt-Out List shall be
7 available online at the Illinois Junk Mail Opt-Out List web
8 site to a person desiring to send junk mail if the person
9 has registered in accordance with this subsection d). The
10 list shall be available in a text or other compatible
11 format, at the discretion of the Attorney General, but
12 shall allow bulk mailers to select and sort by specific zip
13 codes;

14 (x) specify such other matters relating to the database
15 as the Attorney General deems necessary or desirable.

16 (e) If the federal government establishes one or more
17 official databases of postal patrons who object to receiving
18 junk mail, the designated agent is authorized to provide
19 appropriate data from the Illinois Junk Mail Opt-Out List
20 exclusively for inclusion in an official national do-not-mail
21 database. To the extent allowed by federal law, the designated
22 agent shall ensure that the Illinois Junk Mail Opt-Out List
23 includes that portion of an official national do-not-mail
24 database that relates to Illinois.

25 (f) The State shall not be liable to any person for
26 gathering, managing, or using information in the Illinois Junk

1 Mail Opt-Out List database pursuant to this Act and for
2 enforcing this Act.

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

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

11 (i) No person shall place the address of another person on
12 the Illinois Junk Mail Opt-Out List without the other person's
13 permission.

14 Section 25. Enforcement; penalties; defenses.

15 (a) The Attorney General may initiate administrative
16 proceedings in accordance with rules adopted under this Act
17 relating to a knowing and willful violation.

18 (b) The Attorney General may assess a civil penalty not to
19 exceed \$1,000 for the first violation and not to exceed \$2,500
20 for a second or subsequent violation. Each individual violation
21 shall be a separate and distinct offense under this Section.
22 The Attorney General shall, at a minimum, consider the
23 following factors:

24 (1) whether the offense was knowing or willful;

25 (2) whether the entity committing the offense has a

1 prior history of non-compliance with this Act;

2 (3) the offender's relative ability to pay a penalty;

3 (4) whether the offender has or has not cooperated with
4 the Attorney General in pursuing the investigation; and

5 (5) such other special, mitigating, or aggravating
6 circumstances that the Attorney General may find to exist.

7 (c) Any proceeding conducted under this Section is subject
8 to the Illinois Administrative Procedure Act.

9 (d) Nothing in this Section may be construed to restrict
10 any right that any person may have under any other law or at
11 common law.

12 (e) No action or proceeding may be brought under this
13 Section:

14 (1) More than one year after the person bringing the
15 action knew or should have known of the occurrence of the
16 alleged violation; or

17 (2) More than one year after the termination of any
18 proceeding or action arising out of the same violation or
19 violations by the State of Illinois, whichever is later.

20 (f) The remedies, duties, prohibitions, and penalties in
21 this Act are not exclusive and are in addition to all other
22 causes of action, remedies, and penalties provided by law.

23 Section 30. The Junk Mail Opt-Out Fund. The Junk Mail
24 Opt-Out Fund is created as a special fund in the State
25 treasury. All civil penalties collected in the administration

1 and enforcement of the Junk Mail Opt-Out List Act shall be
2 deposited into this Fund. Moneys in this fund shall, subject to
3 appropriation by the General Assembly, be used by the Attorney
4 General for implementation, administration, and enforcement of
5 the Junk Mail Opt-Out Act.

6 Section 95. The State Finance Act is amended by adding
7 Section 5.891 as follows:

8 (30 ILCS 105/5.891 new)

9 Sec. 5.891. The Junk Mail Opt-Out Fund.

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.