



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB2115

Introduced 2/14/2008, by Sen. David Luechtefeld

#### SYNOPSIS AS INTRODUCED:

New Act  
30 ILCS 105/5.710 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, 2009, 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, political entity, or charitable entity organized under Section 501(c)(3) of the Internal Revenue Code, or by a business to its customers, is not junk mail. Provides that the fines 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 fines 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.

LRB095 19172 AJO 45411 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 (a) 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 (b) 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 (c) 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 (d) 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 (e) 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 (f) It is in the public interest to establish a mechanism  
9 under which the residents of this State can decide whether or  
10 not to 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 organized under  
8 Section 501(c)(3) of the federal Internal Revenue Code of  
9 1986 while such entity is engaged in fund-raising to  
10 support the charitable purpose for which the entity was  
11 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 fund-raising for political purposes;  
17 or

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

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

1 Postal Service.

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

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

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

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

13 (c) On or after July 1, 2009, or upon the initial  
14 availability and accessibility of the Illinois Junk Mail  
15 Opt-Out List, whichever is earlier, a person that desires to  
16 send junk mail shall update the person's copy of the Illinois  
17 Junk Mail Opt-Out List, conforming consolidated junk mail  
18 opt-out list, or a list obtained from a conforming list broker  
19 within 30 days after the beginning of every calendar quarter.

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

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

1 with rules promulgated under of subsection (d) of this Section,  
2 of those postal patrons' objections to receiving junk mail. The  
3 Attorney General shall administer the program.

4 (b) Not later than July 1, 2009, the Attorney General shall  
5 contract with a designated agent, which shall maintain the web  
6 site and database containing the Illinois Junk Mail Opt-Out  
7 List. If no more than one entity bids on the contract, the  
8 Attorney General may award the contract at its discretion.

9 (c) Not later than July 1, 2009, the designated agent,  
10 using the designated State Internet web site, shall develop and  
11 maintain the Illinois Junk Mail Opt-Out List database with  
12 information provided by postal patrons.

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

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

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

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

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



1 State Internet web site or by calling a designated  
2 statewide, toll-free telephone number maintained by the  
3 designated agent as a part of the Illinois Junk Mail  
4 Opt-Out List;

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

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

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

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

26 (viii) require the designated agent to maintain an

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

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

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

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

26 (f) The State shall not be liable to any person for

1 gathering, managing, or using information in the Illinois Junk  
2 Mail Opt-Out List database pursuant to this Act and for  
3 enforcing the provisions of this Act.

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

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

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

15 Section 25. Enforcement; penalties; defenses.

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

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

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

1           (2) whether the entity committing the offense has a  
2 prior history of non-compliance with this Act;

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

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

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

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

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

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

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

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

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

24          Section 30. The Junk Mail Opt-Out Fund. The Junk Mail  
25 Opt-Out Fund is created as a special fund in the State

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

7 Section 95. The State Finance Act is amended by adding  
8 Section 5.710 as follows:

9 (30 ILCS 105/5.710 new)

10 Sec. 5.710. The Junk Mail Opt-Out Fund.

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