

ASSEMBLY, No. 4119

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MARCH 15, 2007

Sponsored by:

Assemblywoman LINDA STENDER

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Establishes a "no mail" list for residents of this State.

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT concerning certain commercial solicitations and
2 supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. As used in this act:

8 "Director" means the Director of the Division of Consumer
9 Affairs in the Department of Law and Public Safety.

10 "Division" means the Division of Consumer Affairs in the
11 Department of Law and Public Safety.

12 "Mailing solicitation" means any communication sent through
13 the United States Postal Service or other mail carrier for the
14 purpose of encouraging the purchase or rental of, or investment in,
15 property, goods or services, but does not include communications
16 that are made:

17 a. To any resident with that resident's prior express invitation or
18 permission;

19 b. By or on behalf of any person or entity with whom a resident
20 has had a business contact within the past six months or with whom
21 the resident has a current business or personal relationship;

22 c. By or on behalf of an entity organized under Chapter 501 (c)
23 (3) of the United States Internal Revenue Code, as amended,
24 provided that a bona fide member of that entity makes the
25 communication and that the member is seeking charitable
26 contributions to support the purposes for which the entity was
27 established;

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

30 (1) Subject to such authority, the entity is required to maintain a
31 license, permit or certificate to sell or provide the merchandise
32 being offered through correspondence; and

33 (2) The entity is required by law or rule to develop and maintain
34 a "no mail" list; or

35 e. By a person responding to a referral or working from the
36 person's primary residence or by a person licensed by the State to
37 carry out a trade, occupation or profession who is setting or
38 attempting to set an appointment for actions relating to that licensed
39 trade, occupation, or profession within this State.

40 "Resident" means an individual who has a mailing address in this
41 State.

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43 2. The division shall establish and maintain a "no mail" list and
44 may utilize a national "do not mail" list, if applicable. The division
45 may contract with a private vendor to establish and maintain the "no
46 mail" list, provided that:

47 a. the private vendor meets standards established by the division
48 pursuant to section 7 of this act that require the vendor to:

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- 1 (1) be financially sound;
- 2 (2) have the capacity to perform the service required;
- 3 (3) have a record of past performance; and
- 4 (4) have no conflict of interest with a sender of mailing
- 5 solicitations or an association thereof; and
- 6 b. the contract requires the private vendor to provide the "no
- 7 mail" list in a printed hard copy format, and in any other format, as
- 8 may be prescribed by the division.

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10 3. A person shall not send or cause to be sent any mailing

11 solicitation to the mailing address of any resident of this State

12 whose mailing address is included on the "no mail" list established

13 by the division pursuant to section 2 of this act, except for a mailing

14 solicitation which is sent within three months of the date that the

15 resident's mailing address was first included on the "no mail" list

16 but only if the person sending the solicitation had not, at the time of

17 the sending of the solicitation, obtained a "no mail" list which

18 included the person's mailing address and the "no mail" list used by

19 the person sending the solicitation was issued less than three

20 months prior to the time the solicitation was sent.

21

22 4. A person who desires to be included on the "no mail" list

23 shall notify the division by calling a toll-free number provided or

24 designated by the division, or in any other manner and at a time

25 prescribed by the division. A person who is included on the "no

26 mail" list shall be removed from the "no mail" list upon the person's

27 written request. The "no mail" list shall be updated not less than

28 quarterly and the division shall, if the "no mail" list is not readily

29 accessible through other means, make the "no mail" list available to

30 persons who wish to send mailing solicitations to residents of this

31 State for a fee that the division shall prescribe.

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33 5. A violation of the provisions of section 3 of this act shall be

34 an unlawful practice subject to the penalties applicable pursuant to

35 section 1 of P.L.1966, c.39 (C.56:8-13) and section 2 of P.L.1999,

36 c.129 (C.56:8-14.3), except that a person may not be held liable for

37 violating this act if:

- 38 a. the person has obtained a copy of, and updated quarterly, the
- 39 "no mail" list and has established and implemented written policies
- 40 and procedures related to the requirements of this act;
- 41 b. the person has trained other persons in the person's employ in
- 42 the requirements of this act;
- 43 c. the person maintains records demonstrating compliance with
- 44 subsections a. and b. of this section and the requirements of this act;
- 45 and
- 46 d. any sending of a mailing solicitation is an isolated act made
- 47 no more than one time in a 12-month period.

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1 6. a. There is hereby established in the General Fund a special
2 dedicated, non-lapsing fund to be known as the "Consumer
3 Protection Fund," which shall be administered by the State
4 Treasurer. The State Treasurer shall deposit into the "Consumer
5 Protection Fund" all fees and penalties collected pursuant to this
6 act.

7 b. The Legislature shall annually appropriate from the
8 "Consumer Protection Fund" monies to the division for the payment
9 of costs of producing and distributing educational materials and
10 conducting educational activities relating to the promotion of the
11 "no mail" list and all related costs and expenditures incurred in the
12 administration of this act.

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14 7. The division, pursuant to the provisions of the
15 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
16 seq.), shall promulgate rules and regulations necessary to
17 implement this act, which shall include, but not be limited to:

18 a. provisions governing the availability and distribution of the
19 "no mail" list established pursuant to section 2 of this act;

20 b. any other matters relating to the "no mail" list established
21 pursuant to section 2 of this act that the division deems necessary;
22 and

23 c. such procedures as may be most effective to ensure that the
24 "no mail" list is up-to-date and accurately reflects the mailing
25 addresses of persons wishing to be on the "no mail" list and
26 procedures to identify mailing addresses that have been reallocated
27 to persons other than those who have indicated that they wish to be
28 on the "no mail" list.

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30 8. Information submitted to the division by a person pursuant to
31 the provisions of this act shall not be a government record under
32 P.L.1963, c.73 (C.47:1A-1 et seq.) or the common law concerning
33 access to government records except as provided in this act.

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35 9. This act shall take effect immediately but sections 1 through 8
36 shall remain inoperative until the Director of the Division of
37 Consumer Affairs in the Department of Law and Public Safety
38 certifies to the Attorney General that the division is prepared to
39 establish and maintain a "no mail" list, or until the 365th day
40 following enactment, whichever occurs first, except that the
41 division may take such anticipatory action as shall be necessary to
42 implement the provisions of the act in advance of the operative
43 date.

STATEMENT

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This bill provides that mailings to residents of this State soliciting the sale of consumer goods or services are prohibited if the mailing address of the residents have been placed on the "no mail" list established by the Division of Consumer Affairs (the "division").

The bill provides that the "no mail" list established by the division shall contain a list of the mailing addresses of residents within this State who do not wish to receive mailing solicitations.

The bill further provides that the division shall work to notify residents about the availability of "no mail" list and procedures for requesting to be placed on the "no mail" list.

The bill establishes certain exceptions to the prohibition on sending mailing solicitations including: (1) the resident has provided prior express permission to the sender to receive such solicitation; (2) the resident has had a business contact within the past six months or has a current business or personal relationship with the sender; (3) the sender is an authorized charitable organization; (4) the sender is an entity over which a federal agency has authority and is required by law to maintain a "no mail" list; or (5) the sender is responding to a referral or attempting to set an appointment.

The bill provides that a violation of the prohibition on sending mail solicitations shall be an unlawful practice subject to penalties in section 1 of P.L.1966, c.39 (C.56:8-13) and section 2 of P.L.1999, c.129 (C.56:8-14.3) unless certain exceptions set forth in section 5 of the bill are applicable.

The bill provides that the costs of producing and distributing educational materials and conducting educational activities relating to the promotion of the "no mail" list and all related costs and expenditures incurred in the administration of the bill shall be paid for from a fund consisting of fees and penalties collected pursuant to the provisions of the bill.