

ASSEMBLY, No. 801

STATE OF NEW JERSEY

213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblyman REED GUSCIORA

District 15 (Mercer)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

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District 1 (Cape May, Atlantic and Cumberland)

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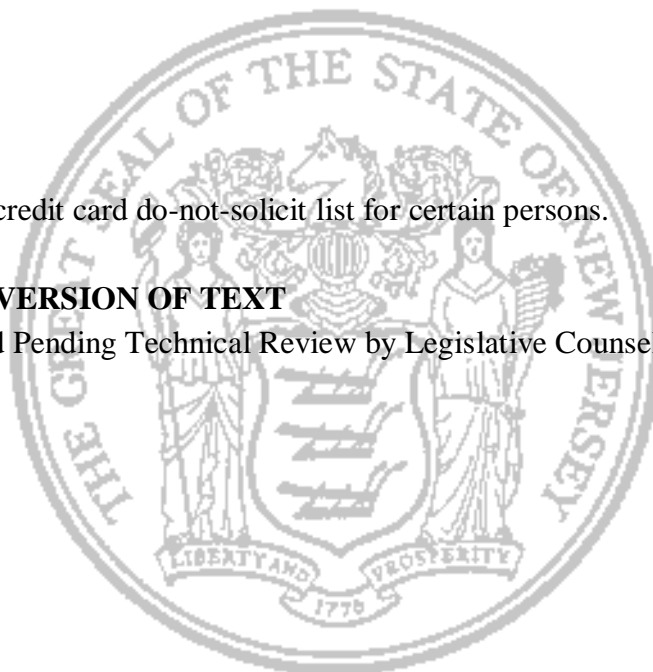
Assemblyman Green, Assemblywoman Stender, Assemblymen Burzichelli, Diegnan, Conners, Johnson, Scalera, Assemblywoman Voss, Assemblymen Cryan, Chivukula, Egan, Malone, Assemblywoman Quigley, Assemblymen McKeon, Fisher, Vas, Prieto, Rooney, Assemblywomen Oliver, Cruz-Perez, Assemblymen Doherty, Greenwald, Assemblywoman Watson Coleman, Assemblymen Moriarty, Giblin, Assemblywoman Lampitt, Assemblyman Coutinho, Assemblywoman Rodriguez and Assemblyman Ramos

SYNOPSIS

Creates a credit card do-not-solicit list for certain persons.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 11/24/2009)

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

3

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

6

7 1. As used in this act:

8 "Agent" means an individual authorized to act for a senior citizen
9 through an executed power of attorney.

10 "Credit card" means any card, plate, coupon book, or other single
11 credit device that may be used from time to time to obtain credit.

12 "Credit card company" means any business, corporation, bank,
13 other financial institution, agent or representative engaged in
14 issuing credit cards.

15 "Division" means the Division of Consumer Affairs in the
16 Department of Law and Public Safety.

17 "Do-not-solicit list" means the credit card do-not-solicit list
18 created pursuant to section 2 of this act.

19 "Family member" means an adult who is a vulnerable consumer's
20 spouse, parent, child, grandparent, or grandchild.

21 "Mental illness" means a current, substantial disturbance of
22 thought, mood, perception or orientation which significantly
23 impairs judgment, capacity to control behavior or capacity to
24 recognize reality.

25 "Senior citizen" means an individual 60 years of age or older
26 who has granted a power of attorney to an agent.

27 "Vulnerable consumer" means an individual with a mental illness
28 who, regardless of age, is a dependent of, or in the custody of, a
29 parent or legal guardian, or an individual whose mental illness may
30 be established by a physician's verification submitted to the division
31 by a family member.

32

33 2. The division shall establish and maintain a do-not-solicit list
34 for vulnerable consumers and senior citizens. The division may
35 contract with a private vendor to establish and maintain the do-not-
36 solicit list. The contract shall require the vendor to provide the list
37 in a printed hard copy format, and in any other format as prescribed
38 by the division.

39 The do-not-solicit list shall be confidential, and shall only be
40 released to or used by entities engaged in the implementation,
41 compliance, and enforcement of P.L. , c. (C.) (pending
42 before the Legislature as this bill). Any information contained in
43 the list shall not be used for any purpose other than such
44 implementation, compliance, and enforcement. Nothing in
45 P.L.1963, c.73 (C.47:1A-1 et seq.) shall be construed to require the
46 division to disclose any information acquired or any records
47 created, except as provided by this act.

1 3. After a vulnerable consumer or senior citizen is registered on
2 the do-not-solicit list established pursuant to section 2 of P.L. ,
3 c. (C.) (pending before the Legislature as this bill) for more
4 than 30 days, no credit card company shall:

5 a. solicit the vulnerable consumer or senior citizen by mail,
6 telephone or electronic mail for the issuance of a credit card;

7 b. grant a credit card in the name of the vulnerable consumer or
8 senior citizen, notwithstanding that the company receives an
9 application for the credit card and approves the application; or

10 c. mail to the vulnerable consumer or senior citizen a fully
11 functional credit card.

12

13 4. No vulnerable consumer or senior citizen shall be liable for
14 any amount resulting from the use of an unsolicited credit card
15 issued in violation of the provisions of section 3 of
16 P.L. , c. (C.) (pending before the Legislature as this bill).

17

18 5. a. The division shall provide notice to the general public of
19 the establishment of the do-not-solicit list pursuant to section 2 of
20 P.L. , c. (C.) (pending before the Legislature as this bill).

21 Any family member or agent who wishes to submit the name of a
22 vulnerable consumer or senior citizen to the list shall notify the
23 division by calling a toll-free telephone number provided by the
24 division, or in any other manner as the division may prescribe,
25 including internet notification, provided that the family member or
26 agent submitting the name of a vulnerable consumer or senior
27 citizen shall certify, under penalty of perjury, to the truth of the
28 facts provided.

29 b. A family member or agent may have a vulnerable consumer
30 or senior citizens' name removed from the registry upon written
31 request to the division. The division shall update the do-not-solicit
32 list not less than quarterly and the division shall make the do-not-
33 solicit list available to credit card companies for a fee that the
34 division shall prescribe.

35

36 6. The provisions of P.L. , c. (C.) (pending before the
37 Legislature as this bill) shall not be construed to prohibit:

38 a. the granting or mailing of a credit card to a vulnerable
39 consumer or senior citizen, in accordance with the provisions of
40 section 3 of P.L. , c. (C.) (pending before the Legislature
41 as this bill), in cases when such credit card is approved at a point of
42 sale; or

43 b. the solicitation of a vulnerable consumer or senior citizen, or
44 the granting or mailing of a credit card to a vulnerable consumer or
45 senior citizen, in accordance with the provisions of section 3 of
46 P.L. , c. (C.) (pending before the Legislature as this bill),
47 in cases where such solicitation, granting, or mailing is solely

1 related to the renewal of a previously existing credit card issued in
2 that vulnerable consumer's or senior citizen's name.

3

4 7. A violation of any provision of P.L. , c. (C.)
5 (pending before the Legislature as this bill) shall be an unlawful
6 practice subject to the penalties pursuant to P.L.1960, c.39 (C.56:8-
7 1 et seq.), except that a credit card company may not be held liable
8 for violating P.L. , c. (C.) (pending before the Legislature
9 as this bill) if:

10 a. the credit card company has obtained a copy of, and updated
11 quarterly, the do-not-solicit list and has established and
12 implemented written policies and procedures related to the
13 requirements of P.L. , c. (C.) (pending before the
14 Legislature as this bill);

15 b. the credit card company has trained its personnel, or
16 telemarketers in the company's employ, in the requirements of
17 P.L. , c. (C.) (pending before the Legislature as this bill);

18 c. the credit card company maintains records demonstrating
19 compliance with subsections a. and b. of this section and the
20 requirements of P.L. , c. (C.) (pending before the
21 Legislature as this bill); and

22 d. any subsequent unsolicited credit card marketing is the result
23 of a bona fide error.

24

25 8. This act shall take effect on the first day of the seventh month
26 following enactment, but the Director of the Division of Consumer
27 Affairs may take such anticipatory administrative actions in
28 advance of that date as may be necessary for the timely
29 implementation of this act upon its effective date.

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STATEMENT

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34 This bill requires the Division of Consumer Affairs in the
35 Department of Law and Public Safety to establish and maintain a
36 credit card do-not-solicit list containing the names of mentally ill
37 individuals and senior citizens in this State who are not to be
38 solicited for credit cards. The bill defines:

39 • mental illness as "current, substantial disturbance of thought,
40 mood, perception or orientation which significantly impairs
41 judgment, capacity to control behavior or capacity to recognize
42 reality;" and

43 • a vulnerable consumer as "an individual with a mental illness
44 who, regardless of age, is a dependent of, or in the custody of, a
45 parent or legal guardian, or an individual whose mental illness
46 may be established by a physician's verification submitted to the
47 division by a family member."

48 The bill authorizes the division to contract with a private vendor

1 to establish and maintain the do-not-solicit list, provided the
2 contract requires the vendor to provide the list in a printed hard
3 copy format, and in any other format as prescribed by the division.

4 Under the bill, credit card companies may not:

- 5 • solicit registered vulnerable consumers or senior citizens by
6 mail, telephone or electronic mail;
- 7 • grant a credit card in the name of the registered consumer; or
- 8 • mail to the registered consumer a fully functional credit card.

9 The bill also specifies that no registered vulnerable consumer or
10 senior citizen shall be liable for any amount resulting from the use
11 of an unsolicited credit card. The bill also exempts credit cards
12 granted at point of sale or as renewals from its provisions.

13 Under the bill, the division is required to notify the public of the
14 establishment of the do-not-solicit list. The bill specifies that a
15 family member or agent who would like to submit the name of a
16 vulnerable consumer or senior citizen to the list must notify the
17 division through a toll-free telephone number provided by the
18 division, or other manner prescribed by the division provided that
19 the family member or agent certifies, under penalty of perjury, to
20 the truth of the facts provided. To remove a senior citizen or
21 vulnerable consumer, the agent or family member is required to
22 submit a written request.

23 Although the bill specifies that any violation of its provisions is
24 an unlawful practice under the Consumer Fraud Act, P.L.1960, c.39
25 (C.56:8-1 et seq.), it states that a credit card company could not be
26 held liable if it was operating in compliance with the requirements
27 of the bill and any unsolicited credit card marketing was the result
28 of a bona fide error. An unlawful practice under the Consumer
29 Fraud Act is punishable by a monetary penalty of not more than
30 \$10,000 for a first offense and not more than \$20,000 for any
31 subsequent offense. In addition, violations can result in cease and
32 desist orders issued by the Attorney General, the assessment of
33 punitive damages and the awarding of treble damages and costs to
34 the injured party.