



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4539

Introduced 1/11/2006, by Rep. Careen M Gordon - Lisa M. Dugan

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.663 new

Creates the Restricted Mailing Registry Act. Provides that, beginning January 1, 2007, mailings to residents of this State soliciting the sale of consumer goods or services are prohibited if the address has been placed on the Restricted Mailing Registry. Provides that the Illinois Commerce Commission shall establish and provide for the operation of a Restricted Mailing Registry, which shall contain a list of the mailing addresses of residential residents who do not wish to receive mailing solicitations. Provides that the Illinois Commerce Commission shall work to notify residents about the availability of and instructions for requesting Registry information from the Illinois Commerce Commission. Provides that the Illinois Commerce Commission shall include, on its Internet web site, information for residents regarding their right to be included in the Registry and the various methods of being included in the Registry. Requires the Illinois Commerce Commission to make the information available on its web site no later than January 1, 2007. Creates exceptions. Provides for administrative penalties to be imposed by the Illinois Commerce Commission. Amends the State Finance Act to create the Restricted Mailing Registry Fund. Provides for fines and fees to be deposited into the Fund and for the use of the Fund to administer the Act. Effective immediately.

LRB094 17129 LCT 52417 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning business.

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
5 Restricted Mailing Registry Act.

6 Section 5. Definitions. As used in this Act:

7 "Established business relationship" means the existence of
8 an oral or written transaction, agreement, contract, or other
9 legal state of affairs involving a person or entity and an
10 existing customer under which both parties have a course of
11 conduct or established pattern of activity for commercial or
12 mercantile purposes and for the benefit or profit of both
13 parties. A pattern of activity does not necessarily mean
14 multiple previous contacts. The established business
15 relationship must exist between the existing customer and the
16 person or entity directly, and does not extend to any related
17 business entity or other business organization of the person or
18 entity or related to the person or entity or the person or
19 entity's agent including but not limited to a parent
20 corporation, subsidiary partnership, company, or other
21 corporation or affiliate.

22 "Existing customer" means an individual who has either:

23 (1) entered into a transaction, agreement, contract,
24 or other legal state of affairs between a person or entity
25 and a resident of this State under which the payment or
26 exchange of consideration for any goods or services has
27 taken place within the preceding 18 months or has been
28 arranged to take place at a future time; or

29 (2) opened or maintained a debit account, credit card
30 account, or other credit or discount program offered by or
31 in conjunction with the person or entity and has not
32 requested the person or entity to close the account or

1 terminate the program.

2 "Mailing solicitation" means any communication sent
3 through the United States Postal Service or other mail carrier
4 for the purpose of encouraging the purchase or rental of, or
5 investment in, property, goods, or services, or for the purpose
6 of soliciting charitable contributions, but does not include
7 communications:

8 (1) to any resident of this State with that resident's
9 prior express invitation or permission when a voluntary
10 2-way communication between a person or entity and the
11 resident has occurred with or without an exchange of
12 consideration. A mailing solicitation is presumed not to be
13 made at the express request of a resident if one of the
14 following occurs, as applicable:

15 (A) The mailing solicitation is made more than 30
16 business days after the last date on which the resident
17 contacted a business with the purpose of inquiring
18 about the potential purchase of goods or services.

19 (B) The mailing solicitation is made more than 30
20 business days after the last date on which the resident
21 consented to be contacted.

22 (C) The mailing solicitation is made more than 30
23 business days after a product or service becomes
24 available, if the resident has made a request to the
25 business for that product or service, which was not
26 then available, and requests to be mailed a notice when
27 the product or service becomes available;

28 (2) by or on behalf of any person or entity with whom a
29 resident has an established business relationship that has
30 not been terminated in writing by either party and that is
31 related to the nature of the established business
32 relationship;

33 (3) by or on behalf of any person or entity with whom a
34 resident is an existing customer, unless the customer has
35 stated to the person or entity or the person or entity's
36 agent that he or she no longer wishes to receive the

1 mailings of the person or entity, or unless the nature of
2 the mailing is unrelated to the established business
3 relationship with the existing customer;

4 (4) by or on behalf of an organization that is exempt
5 from federal income taxation under Section 501(c) of the
6 Internal Revenue Code, but only if the person making the
7 mailing solicitation discloses in the mailing the name,
8 address, and telephone number of the organization;

9 (5) by or on behalf of an individual licensed under the
10 Real Estate License Act of 2000 or as an insurance producer
11 under the Illinois Insurance Code who either:

12 (A) is setting or attempting to set a face to face
13 appointment for actions relating to that individual's
14 real estate or insurance business; or

15 (B) is encouraging or attempting to encourage the
16 purchase or rental of, or investment in, property,
17 goods, or services, which cannot be completed, and for
18 which payment or authorization of payment is not
19 required, until after a written or electronic
20 agreement is signed by the resident.

21 "Registry" means the Restricted Mailing Registry
22 established under this Act.

23 Section 10. Prohibited mailings. Beginning January 1,
24 2007, it is a violation of this Act for any person or entity to
25 make or cause to be made any mailing solicitation to any
26 resident of this State more than 45 days after the person or
27 entity obtains the Registry or any update of the Registry on
28 which the resident's mailing address first appears.

29 Section 15. Complaints. The Illinois Commerce Commission
30 shall receive mailing solicitation complaints from residents
31 who object to the mailings. Complaints shall be taken by any
32 means deemed appropriate by the Illinois Commerce Commission.

33 Section 20. Registry.

1 (a) The Illinois Commerce Commission shall establish and
2 provide for the operation of a Restricted Mailing Registry,
3 which shall contain a list of the mailing addresses of
4 residents who do not wish to receive mailing solicitations.

5 (b) Residents may cause their mailing address to appear on
6 the Registry in any manner prescribed by the Illinois Commerce
7 Commission.

8 (c) Any person or entity conducting mailing solicitations
9 as defined by Section 5 of this Act within the State of
10 Illinois shall purchase the Restricted Mailing Registry and
11 updates no less frequently than every 3 months exclusively from
12 the Illinois Commerce Commission. Failure to do so prior to
13 conducting mailing solicitations is a violation subject to the
14 penalties provided for in Section 35 of this Act.

15 (d) The Illinois Commerce Commission may adopt rules
16 consistent with this Act that the Illinois Commerce Commission
17 deems necessary and appropriate to fully implement this Act.

18 (e) Information pertaining to residents in the Registry is
19 confidential and shall be afforded reasonable privacy
20 protection except as necessary for compliance with Sections 10
21 and 25 and this Section or in a proceeding or action under
22 Section 35 or 40. The information is not a public record under
23 the Freedom of Information Act.

24 (f) A person or entity that obtains the Registry shall not
25 use the Registry for any purpose other than to comply with this
26 Act. These unlawful purposes include, but are not limited to,
27 causing a resident to participate in and be included in the
28 Registry without the resident's knowledge or consent, selling
29 or leasing the Registry to a person other than a mailing
30 solicitor, selling or leasing by a mailing solicitor of the
31 Registry, and a mailing solicitor, either directly or
32 indirectly, persuading a resident with whom it has an
33 established business relationship to place his or her mailing
34 address in the Registry, if the solicitation has the effect of
35 preventing competitors from contacting that solicitor's
36 customers.

1 (g) No person or entity that sells, leases, exchanges, or
2 rents mailing solicitation lists shall include in those lists
3 those mailing addresses that appear in the current Registry.

4 Section 25. Notice of establishment of Registry. The
5 Illinois Commerce Commission shall provide notice to residents
6 of the establishment of the Registry.

7 Section 30. Public notification. The Illinois Commerce
8 Commission shall work to notify residents about the
9 availability of and instructions for requesting information
10 from the Illinois Commerce Commission. The Illinois Commerce
11 Commission shall include, on its Internet web site, information
12 to residents regarding their right to be included in the
13 Registry and the various methods of being included in the
14 Registry. The Illinois Commerce Commission shall make
15 information available on its web site no later than January 1,
16 2007.

17 Section 35. Violation; relief.

18 (a) The Illinois Commerce Commission may initiate
19 administrative proceedings in accordance with rules adopted
20 under this Act relating to a knowing and willful violation of
21 Section 10.

22 (b) If it is determined after a hearing that a person has
23 knowingly and willfully violated one or more provisions of this
24 Act, the Illinois Commerce Commission may assess a fine not to
25 exceed \$1,000 for the first violation and not to exceed \$2,500
26 for a second or subsequent violation. Each individual violation
27 of Section 10 of this Act shall be a separate and distinct
28 offense under this Section. In imposing a penalty under this
29 Section, the Commission shall, at a minimum, consider the
30 following factors:

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

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

- 1 (3) the offender's relative ability to pay a penalty;
- 2 (4) whether the offender has or has not cooperated with
- 3 the Commission in pursuing the investigation; and
- 4 (5) such other special, mitigating, or aggravating
- 5 circumstances as the Commission may find to exist.

6 (c) Any proceeding conducted under this Section is subject

7 to the Illinois Administrative Procedure Act.

8 (d) Nothing in this Section may be construed to restrict

9 any right that any person may have under any other law or at

10 common law.

11 (e) No action or proceeding may be brought under this

12 Section:

13 (1) more than one year after the person bringing the

14 action knew or should have known of the occurrence of the

15 alleged violation; or

16 (2) more than one year after the termination of any

17 proceeding or action arising out of the same violation or

18 violations by the State of Illinois, whichever is later.

19 (f) The remedies, duties, prohibitions, and penalties in

20 this Act are not exclusive and are in addition to all other

21 causes of action, remedies, and penalties provided by law.

22 (g) There is created in the State Treasury a special fund

23 to be known as the Restricted Mailing Registry Fund. All fines

24 collected in the administration and enforcement of this Act

25 shall be deposited into the Fund. Moneys in the Fund shall,

26 subject to appropriation, be used by the Illinois Commerce

27 Commission for implementation, administration, and enforcement

28 of this Act.

29 Section 40. Exemption.

30 (a) A person or entity may not be held liable for violating

31 this Act if:

32 (1) the person or entity has obtained copies of the

33 Registry and updates in compliance with this Act and has

34 established and implemented written policies and

35 procedures related to the requirements of this Act;

1 (2) the person or entity has trained its personnel in
2 the requirements of this Act;

3 (3) the person or entity maintains records
4 demonstrating compliance with subdivisions (1) and (2) of
5 this Section and the requirements of this Act; and

6 (4) any subsequent mailing solicitation is the result
7 of unintentional error.

8 (b) A person or entity that has entered into a contract
9 with another person or entity to make mailing solicitations on
10 its behalf is not liable for a violation of this Act by the
11 person or entity making mailing solicitations under the
12 contract if the person or entity on whose behalf the mailing
13 solicitations were made has provided written notification to
14 the person or entity making mailing solicitations under the
15 contract that it is necessary to comply with the provisions of
16 this Act when making mailing solicitations.

17 Section 300. The State Finance Act is amended by adding
18 Section 5.663 as follows:

19 (30 ILCS 105/5.663 new)

20 Sec. 5.663. The Restricted Mailing Registry Fund.

21 Section 999. Effective date. This Act takes effect upon
22 becoming law.