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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- ESTABLISHING A JUNK MAIL
OPT-OUT LIST

Introduced By: Representatives Segal, Rice, D Caprio, Williamson, and Pacheco

Date Introduced: March 22, 2007

Referred To: House Constituent Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 5 of the General Laws entitled "BUSINESSES AND PROFESSIONS"

2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 81

4 THE RHODE ISLAND JUNK MAIL OPT-OUT LIST ACT

5 **5-81-1. Short title.** – This chapter shall be known and may be cited as the "Rhode Island
6 junk mail opt-out list act".

7 **5-81-2. Legislative findings.** – It is hereby found and declared as follows:

8 (1) Unsolicited bulk mail ("junk mail") now represents a major portion of the budget and
9 workload of the United States Postal Service, with over ninety billion (90,000,000) pieces
10 delivered per year. The disposal of junk mail delivered to Rhode Island residents creates
11 significant waste management issues and expenses for the state of Rhode Island.

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

15 (3) Many citizens of this state view junk mail as an imposition on their time, an invasion
16 of their privacy, and an environment sacrilege.

17 (4) Individual rights and commercial freedom of speech should be balanced in a way that
18 accommodates both individual choice and legitimate marketing practices.

1 (5) Although small businesses and charitable and political organizations are exempt from
2 this chapter in order not to hamper the free flow of ideas in our democracy, the general assembly
3 encourages such organizations to voluntarily comply with this chapter when possible.

4 (6) It is in the public interest to establish a mechanism under which the residents of this
5 state can decide whether or not to receive junk mail.

6 **5-81-3. Definitions.** – As used in this chapter:

7 (1) "Bulk mailer" means a person that sends, on behalf of itself or another person,
8 substantially similar pieces of mail to twenty-five (25) or more postal patrons.

9 (2) "Conforming consolidated junk mail opt-out list" means any database that includes
10 addresses of postal patrons that do not wish to receive junk mail, if such database has been
11 updated within the immediately preceding thirty (30) days to include all of the addresses on the
12 Rhode Island junk mail opt-out list.

13 (3) "Conforming list broker" means any person that provides lists for the purpose of bulk
14 mailings, if every address that is included on the Rhode Island junk mail opt-out list has been
15 removed from such lists at least every thirty (30) days.

16 (4) "Designated agent" means the party with which the public utilities commission
17 created in section 39-1-3, contracts under subsection 5-81-5(2).

18 (5) "Established business relationship" means a relationship that:

19 (i) was formed, prior to the sending of junk mail, through a voluntary, two-way
20 communication between a seller or bulk mailer and a postal patron, with or without consideration,
21 on the basis of an application, purchase, ongoing contractual agreement or commercial
22 transaction between the parties regarding products or services offered by such seller or bulk
23 mailer;

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

25 (iii) currently exists or has existed within the immediately preceding one hundred eighty
26 (180) days.

27 (6) "Established business relationship", with respect to a financial institution, as defined
28 in section 501 of the federal "Gramm-Leach-Bliley act", pub. 1. 106-102,113 stat. 1388, as
29 amended, or an affiliate thereof, includes any situation in which a financial institution or affiliate
30 makes bulk mailings related to other financial services offered, if the financial institution is
31 subject to the requirements regarding privacy of Title V of the federal "Gramm-Leach-Bliley act",
32 pub. 1. 106-102, 113 stat. 1388, as amended, and the financial institution or affiliate regularly
33 conducts business in Rhode Island.

34 (7) (i) "Junk mail" means any printed mater sent by mail for the purpose of encouraging

1 the purchase or rental of, or investment in, property, goods, or services.

2 (ii) Notwithstanding paragraph (i) hereof, "junk mail" does not include communications:

3 (A) To any postal patron with that postal patron's prior express invitation or permission;

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

6 (C) By or on behalf of a small business;

7 (D) By or on behalf of an entity organized under section 501 (c)(3) of the federal
8 "internal revenue code of 1986", as amended, while such entity is engaged in fund-raising to
9 support the charitable purpose for which the entity was established;

10 (E) By or on behalf of a political party, political committee, campaign committee,
11 candidate committee, or entity organized under section 527, of the federal "internal revenue code
12 of 1986", as amended, while such entity is engaged in political speech or fund-raising for political
13 purposes; or

14 (F) By a natural person responding to a referral, or working from his or her primary
15 residence, or a person licensed or registered in Rhode Island to carry on a trade, occupation, or
16 profession who is setting or attempting to set an appointment for actions relating to that licensed
17 trade, occupation, or profession within Rhode Island or counties contiguous to Rhode Island.

18 (8) "Postal patron" means any person having a mailing address in Rhode Island, as shown
19 by records of the United States Postal Service.

20 (9) "Small business" means a business entity with three (3) or fewer employees.

21 **5-81-4. Unlawful to send junk mail to residents on the junk mail opt-out list.** – (a) No
22 person shall send or cause to be sent any junk mail to the address of any postal patron who has
23 added that address to the Rhode Island junk mail opt-out list in accordance with rules
24 promulgated under section 5-81-5.

25 (b) A person that sends junk mail to the address of any postal patron shall register in
26 accordance with subdivision 5-81-5(c)(2)(ii).

27 (c) On or after January 1, 2008, or upon the initial availability and accessibility of the
28 Rhode Island junk mail opt-out list, whichever is earlier, a person that desires to send junk mail
29 shall update the person's copy of the Rhode Island junk mail opt-out list, conforming consolidated
30 junk mail opt-out list, or a list obtained from a conforming list broker within thirty (30) days after
31 the beginning of every calendar quarter.

32 **5-81-5. Establishment and operation of a Rhode Island junk mail opt-out list - rules**
33 **– registration.** (a) The Rhode Island junk mail opt-out list program is hereby created for the
34 purpose of establishing a database to use when verifying postal patrons who have given notice, in

1 accordance with rules promulgated under subsection 5-81-5(c)(2) hereof, of such postal patrons'
2 objection to receiving junk mail. The public utilities commission shall administer the program.

3 (b) Not later than January 1, 2008, the public utilities commission shall contract with a
4 designated agent, which shall maintain the website and database containing the Rhode Island junk
5 mail opt-out list. If no more than one entity bids on the contract, the public utilities commission
6 may award such contract at its discretion.

7 (c)(1) Not later than January 1, 2008, the designated agent, using the designated state
8 internet web site, shall develop and maintain the Rhode Island junk mail opt-out list database with
9 information provided by postal patrons.

10 (2) The public utilities commission shall establish, by rule, guidelines for the designated
11 agent for the development and maintenance of the Rhode Island junk mail opt-out list so that the
12 junk mail opt-out list can easily be accessed by persons desiring to send junk mail and by state
13 and local law enforcement agencies. As soon as practicable, in the public utilities commission
14 shall promulgate rules that:

15 (i) Specify that there shall be no cost for a postal patron to provide notification to the
16 designated agent that such postal patron objects to receiving junk mail;

17 (ii) Specify that there shall be an annual registration fee of not more than five hundred
18 dollars (\$500) for persons or entities that wish to send junk mail or otherwise access the database
19 of addresses contained in the Rhode Island junk mail opt-out list database. The public utilities
20 commission shall determine such fee on a sliding scale so that persons or entities with fewer than
21 five (5) employees shall pay no fee. The maximum fee shall be charged only to person with more
22 than one thousand (1,000) employees. Moneys collected from such fees shall cover the direct and
23 indirect costs related to the creation and operation of the Rhode Island junk mail opt-out list.
24 Moneys from such fees shall be collected by and paid directly to the designated agent. The public
25 utilities commission annually adjust the fees below the stated maximum based on revenue history
26 of the fees received by the designated agent. The designated agent shall provide means for on-
27 line registration and credit card payment of fees charged pursuant to this subparagraph (ii). Each
28 such person shall provide a current business name, business address, email address if available,
29 and telephone number when initially registering for the junk mail opt-out list. This information
30 shall be updated when changes occur.

31 (iii) Specify that the method by which each postal patron may give notice to the
32 designated agent of his or her objection to receiving junk mail, or may revoke such notice, shall
33 be exclusively by entering the address of the postal patron directly into the database via the
34 designated state internet web site or by calling a designated statewide, toll-free telephone number

1 maintained by the designated agent as a part of the Rhode Island junk mail opt-out list;

2 (iv) Specify that the date of every notice received in accordance with subparagraph (iii)
3 of this paragraph (b) be recorded and included as part of the information in the junk mail opt-out
4 list;

5 (v) Require the designated agent to provide updated information about the Rhode Island
6 junk mail opt-out list program on the designated state web site, subject to supervision by the
7 public utilities commission;

8 (vi) Prohibit the designated agent or any person collecting information to be transmitted
9 to the designated agent from making any use or distribution of names or addresses contained in
10 the junk mail opt-out list except as expressly authorized under this chapter;

11 (vii) Specify the methods by which additions, deletions, changes, and modifications shall
12 be made to the Rhode Island junk mail opt-out list database and how updates of the database shall
13 be made available to persons desiring such updates. Such methods shall include provisions to
14 remove from the Rhode Island junk mail opt-out list, on at least an annual basis, every address
15 away from which the original postal patron has moved.

16 (viii) Require the designated agent to maintain an automated, on-line complaint system
17 for postal patrons to report suspected violations over the internet web site. The automated, on-
18 line complaint system shall have the capability to collect, sort, and report suspected violations to
19 the appropriate state enforcement agency electronically for enforcement purposes.

20 (ix) Specify that the junk mail opt-out list shall be available on-line at the Rhode Island
21 junk mail opt-out list web site to a person desiring to send junk mail if the person has registered
22 in accordance with this section. The list be available in a text or other compatible format, at the
23 discretion of the public utilities commission, but shall allow bulk mailers to select and sort by
24 specific zip codes.

25 (x) Specify such other matters relating to the database as the public utilities commission
26 deems necessary or desirable.

27 (3) If the federal government establishes one or more official databases of postal patrons
28 who object to receiving junk mail, the designated agent is authorized to provide appropriate data
29 from the official Rhode Island junk mail opt-out list exclusively for inclusion in an official,
30 national do-not-mail database. To the extent allowed by federal law, the designated agent shall
31 ensure that the Rhode Island junk mail opt-out list includes that portion of an official national do-
32 not-mail database that relates to Rhode Island.

33 (d) The state shall not be liable to any person for gathering, managing, or using
34 information in the Rhode Island junk mail opt-out list database pursuant to this chapter and for

1 enforcing the provisions of this chapter.

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

5 (f) As soon as practicable, the designated agent shall update the database, on an ongoing
6 basis, with information provided by postal patrons and the United States postal service.

7 (g) No person shall place the address of another person on the Rhode Island junk mail
8 opt-list without the other person's permission.

9 **5-81-6. Enforcement – penalties - defenses.** – (a) On and after January 1, 2008,
10 violation of any provision of this chapter shall constitute a deceptive trade practice under chapter
11 6-13.1 and may be enforced under said chapter 6-13.1. No state enforcement action under this
12 chapter may be brought against a person for fewer than three (3) violations per month.

13 (b) Notwithstanding subsection (a) of this section, it shall not be a violation of this
14 chapter if:

15 (1) The person has otherwise fully complied with this chapter and has established and
16 implemented, prior to the violation, written practices and procedures to effectively prevent the
17 sending of junk mail in violation of this chapter; or

18 (2) The violation resulted from an error in transcription or other technical defect, not the
19 fault of the person or equipment or software within its control, that caused the information in the
20 junk mail opt-out list as received by the person to differ from the information that was or should
21 have been included in the junk mail opt-out list as transmitted by the designated agent.

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

24 (d) No provider of address information or address lists shall be held liable for violations
25 of this chapter committed by other persons.

26 SECTION 2. Section 6-13.1-1 of the General Laws in Chapter 6-13.1 entitled "Deceptive
27 Trade Practices" is hereby amended to read as follows:

28 **6-13.1-1. Definitions.** -- As used in this chapter:

29 (1) "Documentary material" means the original or a copy of any book, record, report,
30 memorandum, paper, communication, tabulation, map, chart, photograph, mechanical
31 transcription, or other tangible document or recording wherever situated.

32 (2) "Examination" of documentary material includes the inspection, study, or copying of
33 any documentary material, and the taking of testimony under oath or acknowledgment in respect
34 of any documentary material or copy of any documentary material.

1 (3) "Person" means natural persons, corporations, trusts, partnerships, incorporated or
2 unincorporated associations, and any other legal entity.

3 (4) "Rebate" means the return of a payment or a partial payment, which serves as a
4 discount or reduction in price.

5 (5) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution
6 of any services and any property, tangible or intangible, real, personal, or mixed, and any other
7 article, commodity, or thing of value wherever situate, and include any trade or commerce
8 directly or indirectly affecting the people of this state.

9 (6) "Unfair methods of competition and unfair or deceptive acts or practices" means any
10 one or more of the following:

11 (i) Passing off goods or services as those of another;

12 (ii) Causing likelihood of confusion or of misunderstanding as to the source,
13 sponsorship, approval, or certification of goods or services;

14 (iii) Causing likelihood of confusion or of misunderstanding as to affiliation, connection,
15 or association with, or certification by, another;

16 (iv) Using deceptive representations or designations of geographic origin in connection
17 with goods or services;

18 (v) Representing that goods or services have sponsorship, approval, characteristics,
19 ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship,
20 approval, status, affiliation, or connection that he or she does not have;

21 (vi) Representing that goods are original or new if they are deteriorated, altered,
22 reconditioned, reclaimed, used, or secondhand; and if household goods have been repaired or
23 reconditioned, without conspicuously noting the defect which necessitated the repair on the tag
24 which contains the cost to the consumer of the goods;

25 (vii) Representing that goods or services are of a particular standard, quality, or grade, or
26 that goods are of a particular style or model, if they are of another;

27 (viii) Disparaging the goods, services, or business of another by false or misleading
28 representation of fact;

29 (ix) Advertising goods or services with intent not to sell them as advertised;

30 (x) Advertising goods or services with intent not to supply reasonably expectable public
31 demand, unless the advertisement discloses a limitation of quantity;

32 (xi) Making false or misleading statements of fact concerning the reasons for, existence
33 of, or amounts of price reductions;

34 (xii) Engaging in any other conduct that similarly creates a likelihood of confusion or of

1 misunderstanding;

2 (xiii) Engaging in any act or practice that is unfair or deceptive to the consumer;

3 (xiv) Using any other methods, acts or practices which mislead or deceive members of
4 the public in a material respect;

5 (xv) Advertising any brand name goods for sale and then selling substituted brand names
6 in their place;

7 (xvi) Failure to include the brand name and or manufacturer of goods in any
8 advertisement of the goods for sale, and, if the goods are used or secondhand, failure to include
9 the information in the advertisement;

10 (xvii) Advertising claims concerning safety, performance, and comparative price unless
11 the advertiser, upon request by any person, the consumer council, or the attorney general, makes
12 available documentation substantiating the validity of the claim;

13 (xviii) Representing that work has been performed on or parts replaced in goods when
14 the work was not in fact performed or the parts not in fact replaced; or

15 (xix) Failing to separately state the amount charged for labor and the amount charged for
16 services when requested by the purchaser as provided for in section 44-18-12(b)(3).

17 (xx) Advertising for sale at a retail establishment the availability of a manufacturer's
18 rebate by displaying the net price of the advertised item (the price of the item after the rebate has
19 been deducted from the item's price) in the advertisement, unless the amount of the
20 manufacturer's rebate is provided to the consumer by the retailer at the time of the purchase of the
21 advertised item. It shall be the retailer's burden to redeem the rebate offered to the consumer by
22 the manufacturer.

23 (xxi) Refusing to accept a photocopy or other reasonable facsimile of an original sales
24 receipt when the consumer is redeeming a rebate.

25 (xxii) Sending junk mail to any Rhode Island resident in violation of the provisions
26 contained in chapter 5-81 of the general laws entitled "Rhode Island junk mail opt-out list act".

27 SECTION 3. This act shall take effect on January 1, 2008.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS -- ESTABLISHING A JUNK MAIL
OPT-OUT LIST

1 This act would establish a junk mail opt-out list. It would direct the public utilities
2 commission to solicit bids and contract with a junk mail opt-out administrator to maintain a list of
3 person who wish to reject all junk mail. The administrator (designated agent) would be required
4 to maintain a website and toll-free phone number for persons who wish to place their address on
5 the list. All persons who wish to send junk mail would be required to register and purchase an
6 updated list. It would also place the mailing of junk mail on the list of deceptive trade practices.

7 This act would take effect January 1, 2008.

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