

**STATE
FISCAL IMPACT**

Drafting Number: LLS 07-0696
Prime Sponsor(s): Rep. Gagliardi

Date: February 21, 2007
Bill Status: House Business Affairs and Labor
Fiscal Analyst: Gary J. Estenson (303-866-4976)

TITLE: CONCERNING THE ABILITY OF A PERSON TO REFUSE UNWANTED COMMERCIAL MAIL, AND, IN CONNECTION THEREWITH, ENACTING THE "COLORADO JUNK MAIL OPT-OUT LIST ACT" CONTAINING EXEMPTIONS FOR CHARITABLE NONPROFIT ORGANIZATIONS, POLITICAL ORGANIZATIONS, AND BUSINESSES WITH WHICH THE PERSON HAS AN ESTABLISHED BUSINESS RELATIONSHIP.

Fiscal Impact Summary	FY 2007-2008	FY 2008-2009
State Revenue		
Cash Funds - Fees	\$165,165	\$165,165
General Fund - Fines	<5,000	<5,000
State Expenditures		
Cash Funds - Fees	\$161,832	\$158,672
FTE Position Change	0.3 FTE	0.3 FTE
Effective Date: Unless a referendum petition is filed, the bill will take effect August 8, 2007, assuming the General Assembly adjourns on May 9, 2007, as scheduled.		
Appropriation Summary for FY 2007-2008: See State Appropriations section.		
Local Government Impact: None.		

Summary of Legislation

The bill creates the "Colorado Junk Mail Opt-Out List Act" and prohibits persons from sending junk mail to postal patrons on the list. A person who sends so-called junk mail must register and pay an annual fee to an agent designated by the Department of Regulatory Affairs, Public Utilities Commission (PUC). The PUC will set the fee on a sliding scale based on business size and businesses with fewer than five (5) employees are not required to pay the fee. The act exempts non-profit charitable organizations, political organizations, and businesses with an established relationship with a postal patron.

Before January 1, 2008, the PUC will contract with a designated agent to maintain a website and database containing the opt-out list. The designated agent shall develop the database with information provided by postal patrons. There is no cost for a postal patron to include his or her address on the junk mail list. The junk mail opt-out list must be easily accessible to postal patrons, businesses that send junk mail, and local law enforcement agencies. If the federal government establishes a similar database, the designated agent is authorized to provide appropriate data from its opt-out database.

On or after January 1, 2008, or upon availability of the list, a person who wants to send junk mail must obtain an updated copy of the opt-out list. A person who sends junk mail to a postal patron that appears on the opt-out list or violates any other provisions of the Colorado Junk Mail Opt-Out List Act has engaged in a deceptive trade practice. No enforcement for deceptive trade practices may be brought against a person with fewer than three (3) violations per month or against persons who have complied with the act and have implemented practices and procedures to effectively prevent sending junk mail prior to a violation.

Background. The bill is based on the Colorado No-Call List, which prohibits telemarketing and other business entities from making unwanted telephone calls to a person who has placed his or her telephone number on the no-call registry.

State Revenue

The bill is expected to increase total state revenue by \$165,165 annually, assuming approximately 3,000 direct mail firms register annually and pay an average registration fee of \$55. The fiscal note assumes that only direct mail firms that mail junk mail on behalf of other business entities will be required to be registered.

Fee Impact on Individuals, Families or Business. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency.

The U.S. Census Bureau collects employer information by North America Industry Classification (NAIC) Code. The most recent available data is from 2002 and can be found in the 2002 Economic Census. According to the 2002 Economic Census, there were 3,754 direct mail advertising firms in the United States. The total number of employees working for these firms was 76,490, resulting in an average firm size of 20 employees. Information grouping direct mail firms incrementally by number of employees is not provided in the 2002 Economic Census.

The fiscal note assumes that 80 percent of direct mail firms send junk mail to Colorado households. The bill requires a registration fee sufficient to support the direct and indirect costs of the program. Table 1 summarizes anticipated annual fee revenue based on these assumptions.

Table 1. Registration Fee Summary	FY 2007-08	FY 2008-09
Total Direct Mail Advertising Firms Nationwide	3,754	3,754
% Direct Mail Advertising Firms Registering (80%)	3,003	3,003
Estimated Average Fee Based on Colorado No-Call List (\$55)*	\$55	\$55
Total Fee Revenue	\$165,165	\$165,165

Civil Penalties. A person who sends junk mail in violation of the bill has engaged in a deceptive trade practice punishable by a civil penalty of up to \$10,000 for each violation and up to \$100,000 for a related series of violations. Moneys collected from civil penalties are credited to the General Fund (Section 6-1-112, C.R.S.). The fiscal note assumes that violations will be minimal due to provisions in the bill that prohibit enforcement under certain circumstances.

State Expenditures

The bill will increase total state expenditures by \$161,832 and 0.3 FTE in FY 2007-08 and by \$158,672 and 0.3 FTE in FY 2008-09.

Department of Regulatory Agencies, Public Utilities Commission (PUC). The PUC will select a designated agent to implement and administer the Junk Mail Opt-Out List. Based on the contract cost of the Colorado No-Call List, the estimated annual contract cost is \$81,350. Once the designated agent is in place, ongoing personnel duties will include contract administration, fee setting, and making presentations to consumer and business groups interested in participating or complying with the Junk Mail Opt-Out List requirements.

Finally, legal services from the Department of Law are needed to promulgate rules in the first year. Ongoing legal services are necessary to enforce the act; including seeking injunctive relief and filing civil suits against entities deemed in violation. Total annual legal services hours are estimated at 907 hours. Table 2 summarizes anticipated program expenditures.

Table 2. PUC Expenditures Under HB 07-1302		
Cost Components	FY 2007-08	FY 2008-09
Personal Services	\$14,654	\$14,654
FTE	0.3	0.3
Operating, Travel, and Program Expenses	1,200	1,200
Capital Outlay & Computer Costs (one-time)	3,160	---
Legal Services @ \$67.77 per hour	61,468	\$61,468
Contract Costs	81,350	81,350
TOTAL	\$161,832	\$158,672

Judicial Branch. Based on experience with the state No-Call List, civil filings in state district court are expected to be minimal and can be absorbed within existing resources.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, funding for the items noted below will not be included in fiscal note expenditure estimates. However, indirect costs are calculated for the purpose of identifying the "per applicant" cost of a new or revised fee to reflect the total direct and indirect costs required to support a particular program.

- group health, life and dental insurance
- inflation indices
- amortization equalization disbursements
- supplemental amortization equalization disbursements
- short-term disability
- leased space
- indirect costs

State Appropriations

For FY 2007-08, the Department of Regulatory Agencies, PUC will require a cash fund appropriation \$161,832 and 0.3 FTE from registrations fees collected under the Colorado Junk Mail Opt-Out List Act.

Departments Contacted

Regulatory Agencies Law Judicial