Department of Legislative Services

Maryland General Assembly
2000 Session

FISCAL NOTE

Senate Bill 185 (Senator Roesser, *et al.*)
Finance

Telecommunications - Telephone Solicitations - Regulation

This bill requires the Public Service Commission (PSC) to create and operate a database of "residential telephone subscribers" in the State who choose not to receive telephone solicitations. The PSC must adopt regulations pertaining to the database, including one specifying the fee that a person must pay to obtain a copy of the database and the fee to have one's name included in the database. The bill requires telephone solicitors to purchase the latest updated version of the database and to refrain from soliciting telephone numbers listed in the database. A violation of the bill gives rise to a private cause of action. A violation is also an unfair and deceptive trade practice and, if the violation involves a solicitation offering credit services, a violation of the Maryland Credit Services Business Act. The Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims and Maryland Credit Services Business Act claims.

Fiscal Summary

State Effect: Potential $200,000 to $300,000 annual increase in general fund expenditures by the PSC to create and operate the database. General fund expenditures to the Attorney General could increase by $216,400 in FY 2001, reflecting the cost for enforcement. Out-year projections would reflect annualization and inflation. Although the amount cannot be readily estimated at this time, it is expected that general fund revenues from fees charged by the PSC will range between $370,000 and $730,000 annually.

Local Effect: None.

Small Business Effect: Minimal, assuming the fee charged is not excessive and reflects the cost of developing and operating the program.

Analysis

Bill Summary: This bill requires the PSC to create, maintain, and update a database of residential telephone subscribers in the State who choose not to receive telephone solicitations. The PSC is authorized to contract with another entity, after competitive bidding, to create and operate the database. A residential telephone subscriber includes the individual who has subscribed to the residential telephone service and any individual who resides with the subscriber. Information contained in the database and information used to create and operate the database may only be used for compliance with the bill or in an action or proceeding to enforce provisions of the bill. The PSC must also adopt regulations pertaining to the database, including one specifying the fee that a person must pay to obtain a copy of the database.

Telephone solicitors are required to purchase the most recently updated version of the database, published four times per year. The bill prohibits telephone solicitation to telephone numbers listed in the database. Use of an automated dialing, push-button, or tone-activated device that operates sequentially or in a manner that the user is unable to avoid contacting numbers listed in the database is *prima facie* evidence of an intention to violate the bill.

A person receiving a telephone solicitation in violation of the bill may bring an action against the person making or causing the telephone solicitation to recover reasonable attorneys' fees and the greater of $1,000 or actual damages. An action brought under the bill must be brought within the later of: (1) two years after the person knew or should have known of the alleged violation; or (2) two years after the termination of any proceeding or action by the State for an alleged violation of the bill.

A violation of the bill is an unfair and deceptive trade practice and, if the violation involves a solicitation offering credit services, a violation of the Maryland Credit Services Business Act.

The bill does not apply to telephone solicitations that are: (1) in response to express requests or inquiries by residential subscribers; (2) made in response to express permission from a residential subscriber; (3) directly connected with consumer goods or services purchased by a residential subscriber and made within six months of the date of purchase; (4) directly connected with an unexpired, ongoing consumer service contract; (5) made by on behalf of a charitable organization; (6) limited to soliciting the expression of ideas, opinions, or votes; or (7) made to a business.

The Public Service Commission is required to report to the Senate Finance and House Environmental Matters Committees on or before November 1, 2000, on the development of the database and on or before November 1, 2001, on the status of the implementation of the database.

The Office of the Attorney General is required to report to the Senate Finance and House Economic Matters Committees by November 1, 2001, on the status of the enforcement of the provisions of the bill.

Current Law: Maryland law prohibits the use of an automated dialing system with a prerecorded message to: (1) solicit persons to purchase, lease, or rent goods or services; (2) offer a gift or prize; (3) conduct a poll; or (4) request survey information if the results will be used to solicit persons to purchase, lease, or rent goods or services. A violation is a misdemeanor punishable by a fine of up to $1,000 for the first offense and up to $5,000 for each subsequent offence.

A contract made pursuant to a telephone solicitation is not valid and enforceable against a consumer unless the contract complies with the Maryland Telephone Solicitations Act. A merchant may not make any charges to a consumer's credit account until after the merchant has received a copy of the signed contract from the consumer. A violation is an unfair and deceptive trade practice and, if the violation involves a solicitation offering credit services, a violation of the Maryland Credit Services Business Act.

The Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims and Maryland Credit Services Business Act claims.

Background: Under the federal Telephone Consumer Protection Act (TCPA), if a person objects to receiving a telephone solicitation, the solicitor must place that person's name on an internal company do-not-call list, and the request must be honored for ten years from the time of the request. A person on a do-not-call list called more than once in a one-year period may bring a private action for the greater of $500 per violation or actual damages. Triple damages are available for willful or knowing violations.

Nine states (Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Kentucky, Oregon, and Tennessee) have enacted some form of law prohibiting unwanted telephone solicitations.

A work group of the Senate Finance Committee studied the issue of telephone solicitation over the 1999 interim. This bill is a product of that work group.

State Revenues: It is estimated that there are approximately 2,400,000 residential telephone lines in the State. Based on participation rates with similar legislation in Georgia, the number of residential line subscribers who ask to be included on the list could range from 6% to 10% of the total number of residential lines, or between 144,000 and 240,000 telephone lines. For illustrative purposes, a rate structure similar to Georgia's would generate approximately

$370,000 to $730,000 in general fund revenues to the State, assuming 1,300 businesses subscribed to the database and 144,000 to 240,000 residential lines were included. Georgia charges $5.00 to a residential telephone subscriber for two years in its database and $10 per year for businesses that purchase the information. The fee structure for residential telephone subscribers and telephone solicitors could be set to approximate the cost to the PSC for the database's operation and, if appropriate, the cost to the Attorney General for enforcement. The rates could be adjusted to account for actual numbers.

State Expenditures: The bill would require an increase in personnel to the Consumer Protection Division of the Office of the Attorney General in order to handle inquiries and complaints against telephone solicitors. If 7% of the residential telephone subscribers made inquiries to the Attorney General, as was Georgia's experience, the division could receive an additional 10,800 to 16,800 calls per year.

General fund expenditures by the Attorney General could increase by an estimated $216,400 in fiscal 2001, which accounts for the bill's October 1, 2000, effective date. This estimate reflects the cost of hiring one assistant attorney general, one investigator, three complaint supervisors, and one secretary to handle inquiries, investigate and resolve complaints, and provide support services. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

Salaries and Fringe Benefits	$187,000
Start-up Costs	22,000
Operating Expenses	7,400
Total FY 2001 State Expenditures	**$216,400**

Future year expenditures reflect (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

The bill authorizes the PSC to contract with another entity, after competitive bidding, to create and operate the database. The PSC advises that it would contract with another entity for the creation and operation of the database. Without going through the competitive bidding process, a reliable estimate of the cost to the PSC to create and operate the database cannot be made. The Department of Legislative Services assumes that the annual cost could range between $200,000 and $300,000, based on Georgia's experience.

Additional Information

Prior Introductions: Three similar bills were introduced in the 1999 session. HB 20 and HB 873 received unfavorable reports from the House Economic Matters Committee. SB 496 was referred to summer study by the Senate Finance Committee.

Cross File: HB 339 (Delegate Pendergrass, *et al.*) - Environmental Matters.

Information Source(s): Office of the Attorney General, Public Service Commission, National Conference of State Legislatures, Maryland Chamber of Commerce, Department of Legislative Services

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