

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE

House Bill 1097 (Delegate R. Baker. *et al.*)

Economic Matters

Telemarketing Registration and Fraud Prevention Act

This bill requires telemarketing businesses to register annually with the Division of Consumer Protection of the Office of the Attorney General. The bill generally (1) provides a one-year registration period; (2) establishes a registration fee of \$100; (3) requires registrants to purchase a surety bond in the amount of \$100,000 or file a certificate of deposit, cash, or government bond in the amount of \$100,000; (4) requires an owner to keep records of all financial transactions, written notices, disclosures, and acknowledgments; (5) specifies the disclosures that a merchant must make to a customer during a telephone solicitation; (6) prohibits registrants from threatening, intimidating, or using profane language; (7) prohibits registrants from causing the telephone to ring more than five times; (8) prohibits registrants from initiating a telemarketing call to a person who has stated previously that the person does not wish to receive solicitation calls from that telemarketing business; (9) prohibits registrants from engaging in telemarketing to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m.; (10) prohibits applicants from providing false or misleading information on an application, misrepresenting that the telemarketer is registered, advertising that registration as a telemarketer equals an endorsement by the Maryland government, and failing to comply with the bill's requirements; and (11) provides that a violation of the bill's provisions constitutes an unfair and deceptive trade practice.

The bill takes effect on January 1, 2001.

Fiscal Summary

State Effect: General fund expenditures could increase by \$293,100 in FY 2001 reflecting

the bill's January 1, 2001 effective date. Out-year projections reflect annualization and inflation. General fund revenues could increase by \$2 million annually assuming there are 20,000 businesses currently engaging in telemarketing services in Maryland.

(in millions)	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
GF Revenues	\$2.0	\$2.0	\$2.0	\$2.0	\$2.0
GF Expenditures	\$.293	\$.481	\$.505	\$.529	\$.555
Net Effect	\$1.707	\$.453	\$1.495	\$1.471	\$1.445

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None

Small Business Effect: Meaningful. To the extent that telemarketers are small businesses, they would be subject to extensive regulation and a \$100 annual registration fee.

Analysis

Current Law: It is prohibited to use 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 offense.

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.

State Revenues: The bill defines telemarketer as a “person who initiates or receives telephone calls to or from a consumer in the State for telemarketing business.” Telemarketing is defined as a “program ... conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one telephone call.”

The Consumer Protection Division advises that this definition would include businesses that take orders over the phone from people to whom it has sent catalogs, such as L.L. Bean. It is estimated that there are approximately 20,000 businesses engaging in telemarketing activity in Maryland. The bill provides a \$100 annual registration fee. Thus, general fund revenues would increase by approximately \$2,000,000 each year.

State Expenditures: The bill would require a significant increase in personnel to the Office of the Attorney General in order to administer the registration process and handle additional complaints against telemarketing companies that have gone out of business. The two legal secretaries and the two data entry clerks would handle the registration process. The four complaint supervisors and the investigators would also be involved in the registration process. Each application would have to be reviewed. Some of the information, such as the criminal record history and the solvency of the bonding company, would have to be verified.

Other information, such as the promotional scripts used by telemarketers, would have to be reviewed to determine if the company plans to engage in activities that violate the bill’s provisions.

The division would also have to screen complaints received against telemarketing companies, review advertising, review information on the Internet, and take other steps to identify businesses that should be registered. When such companies have been identified, an attorney may need to bring legal actions in order to make these businesses comply with the bill. Furthermore, an attorney must bring an action when a company includes false or misleading information on its registration application, misrepresents that the seller or telemarketer is registered, advertises that registration as a telemarketer equal an endorsement by a governmental agency of the State, or fails to comply with any other provision of the bill.

Work will also be created when a telemarketing company goes out of business in order to handle numerous resulting complaints. A claims form would have to be sent to each complainant and information would have to be entered into a database. Furthermore, the division would have to review each claim and determine any monetary awards.

General fund expenditures could increase by an estimated \$293,100 in fiscal 2001, which accounts for the bill's January 2001 effective date. This estimate reflects the cost of 12 new positions (two assistant attorneys general, two investigators, four complaint supervisors, two legal secretaries, and two data entry clerks). 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	\$236,600
Operating Expenses	<u>56,500</u>
Total FY 2001 State Expenditures	\$293,100

Future year expenditures reflect (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: An identical bill was introduced in the 1999 session as HB 873 and received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

Fiscal Note History: First Reader - February 25, 2000
cm/jr

Analysis by: Ryan Wilson

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510