

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 3
Finance

(Senator Frosh, *et al.*)

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 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.

Fiscal Summary

State Effect: Potential \$200,000 to \$300,000 annual increase in special fund expenditures by PSC to create and operate the database. General fund expenditures by the Attorney General could increase by \$131,800 in FY 2004, 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 special fund revenues from fees charged by PSC would range between \$200,000 and \$500,000 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 PSC to create, maintain, and update a database of residential telephone subscribers in the State who choose not to receive telephone solicitations by January 1, 2004. 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, any individual who resides with the subscriber, and an individual who has subscribed to wireless telephone service within a Maryland area code. 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. PSC must also adopt regulations pertaining to the database, including one specifying the methods by which a residential subscriber is informed of the types of calls exempt from the bill and one specifying the fee that a person must pay to obtain a copy of the database. PSC must charge fees sufficient to support the database but may not charge residential subscribers to be listed in 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.

If the federal government establishes a national do-not-call database, PSC must include information in the national database that relates to the information kept in the Maryland database.

The bill does not apply to telephone solicitations that are: (1) in response to express, verifiable requests or inquiries by residential subscribers; (2) made in response to

express, verifiable permission from a residential subscriber; (3) made by on behalf of a charitable organization; (4) limited to soliciting the expression of ideas, opinions, or votes; or (5) made to a business.

The Public Service Commission is required to report to the Senate Finance and House Environmental Matters committees by November 1, 2003 on the development of the database and by November 1, 2004 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, 2004 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 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, if a person objects to receiving a telephone solicitation, the solicitor must place that person's name in an internal company do-not-call database, and the request must be honored for ten years from the time of the request. A person in a do-not-call database who is 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.

The Federal Trade Commission (FTC) has recently adopted rules to create a national do-not-call database that will apply to most telemarketers. The FTC rules will apply only to industries over which the FTC has jurisdiction. Among the industries not subject to FTC jurisdiction are financial institutions, the telecommunications industry, and charities.

To date, approximately 30 states have some form of do-not-call database. FTC has stated its intent to harmonize state and federal do-not-call databases.

State Fiscal Effect: 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 \$131,800 in fiscal 2004, which accounts for the bill's October 1, 2003 effective date. This estimate reflects the cost of hiring one assistant attorney general, one investigator, and one legal 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	\$117,200
Start-up Costs	13,200
Operating Expenses	<u>1,400</u>
Total FY 2004 State Expenditures	\$131,800

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

The bill authorizes PSC to contract with another entity, after competitive bidding, to create and operate the database. 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 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.

The fee structure for telephone solicitors could be set to approximate the cost to PSC for the database's operation and, if appropriate, the cost to the Attorney General for enforcement.

The criminal penalties provisions of this bill are not expected to significantly affect State revenues or expenditures.

Additional Information

Prior Introductions: Similar bills were introduced in the 1999 through 2002 sessions. SB 674 of 2002 and SB 641 of 2001 received unfavorable reports from the Senate Finance Committee. In 2000, SB 185 and HB 339 received unfavorable reports from the Senate Finance Committee and the House Economic Matters Committee, respectively. In 1999, HB 20 and HB 873 received unfavorable reports from the House Economic Matters Committee, and SB 496 was referred to summer study by the Senate Finance Committee.

Cross File: None.

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

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