HB 487

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 487 (Delegate V. Clagett)
Economic Matters

Commercial Law - Telephone Solicitations - Maryland Do-Not-Call Registry

This bill adopts in Maryland the federal National Do Not Call Registry that was adopted under regulations issued jointly by the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC), thus allowing the Attorney General to enforce that registry under State law. The bill then prohibits a person from making an unauthorized call to a telephone number listed on the registry.

Fiscal Summary

State Effect: General fund expenditures could increase by $140,900 in FY 2005 to cover the cost of investigation and enforcement by the Office of the Attorney General. Future year expenditures reflect annualization and inflation. Any cost recovery resulting from actions brought under the bill cannot be quantified beforehand, but is expected to be minimal.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
GF Revenue	-	-	-	-	-
GF Expenditure	140,900	178,000	188,300	199,300	211,000
Net Effect	($140,900)	($178,000)	($188,300)	($199,300)	($211,000)

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: A telephone solicitor may not initiate a telephone solicitation to a residential subscriber if the subscriber's telephone number has been listed on the registry for at least three months before the date of the date the solicitation was initiated. A residential subscriber's telephone number may be placed on the registry as prescribed by FTC. Information contained in the registry is confidential and may only be used to comply with the bill.

The Attorney General may institute a civil action against a telephone solicitor that violated the bill and to recover for the State a penalty of up to $1,000 for each violation. In addition to an action brought by the Attorney General or any other action otherwise authorized by law, the bill authorizes an individual who receives a call in violation of the bill to bring an action against the violator to recover attorney's fees and liquidated damages of $500. Each prohibited telephone solicitation is a separate violation of the bill.

The bill does not apply to telephone solicitations made: (1) by a solicitor who has obtained express written permission from the residential subscriber; (2) by a solicitor with whom the residential subscriber has an established business relationship; (3) to urge support or opposition to a political candidate or ballot issue; (4) to conduct political polls or solicit the expression of opinions, ideas, or votes; or (5) by or behalf of a charitable organization.

Current Law: Under regulations issued jointly by FTC and FCC, individuals may enter their names into the National Do Not Call Registry. With limited exceptions, telemarketers are prohibited from calling telephone numbers that are entered in the registry. Once a number is entered into the registry, telemarketers must stop calling the number within three months from the date of entry. Violators are subject to a fine of up to $11,000 for each violating call. FCC, FTC, and state Attorneys General may sue in federal court to enforce the federal registry. A state must pass a law adopting the federal registry in order for its state Attorney General to enforce the registry in state courts.

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 federal regulations prohibit telemarketers from blocking their phone numbers from caller identification. Maryland law prohibits the use of an automated dialing system with a prerecorded message for most telemarketing calls.

Background: In late 2003, a federal judge in Colorado ruled that the federal registry violates the First Amendment of the U.S. Constitution. The ruling stated that because calls from charities and telephone surveyors are exempt, the registry discriminates against certain types of commercial speech. The judge refused to grant FTC's request to stay the ruling during its appeal. In February 2004, a three judge panel of the U.S. Court of Appeals for the Tenth Circuit overturned the lower court ruling and held, in *Mainstream Marketing Services, Inc. v. Federal Trade Commission*, that: (1) the federal do not call registry is a "valid commercial speech regulation" because it directly advances "substantial governmental interests" and is "narrowly tailored," thus overcoming the First Amendment challenges; (2) the registry fees telemarketers must pay to access the list are a permissible measure designed to defray the cost of legitimate government regulation; (3) it was not arbitrary and capricious for FCC to adopt the established business relationship exception; and (4) FTC has statutory authority to establish and implement the federal registry.

State Expenditures: To date, approximately 1.3 million Maryland telephone numbers have been listed in the national registry, and approximately 6,100 Marylanders have filed complaints with FTC related to the registry. The Department of Legislative Services understands that FTC will seek the help of local state attorneys general to enforce the national registry, especially in those states where state court enforcement is also an option. The Consumer Protection Division could experience a significant increase in its workload in order to process and pursue these complaints. General fund expenditures could increase by an estimated $140,900 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring one Assistant Attorney General, one fraud investigator, and one administrative specialist to process and pursue complaints under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	$129,500
Other Operating Expenses	11,400
Total FY 2005 State Expenditures	**$140,900**

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: Bills implementing State "do not call" registries have been introduced in the 1999 through 2003 sessions. SB 3 of 2003, SB 674 of 2002, SB 641 of 2001, and SB 185 of 2000 received unfavorable reports from the Finance Committee. In 1999, the Finance Committee referred SB 496 to summer study. In 2003, HB 610 was withdrawn before being heard in the Economic Matters Committee. HB 339 of 2000, HB 20 of 1999, and HB 873 of 1999 received unfavorable reports from the Economic Matters Committee.

Cross File: None.

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

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mh/mdr

Analysis by: Ryan Wilson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510