SB 88

Department of Legislative Services

Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 88 (Senator Frosh, *et al.*)
Finance Economic Matters

Commercial Law - Maryland Telephone Consumer Protection Act

This bill prohibits a person from violating the National Do Not Call Registry that was adopted under regulations issued jointly by the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC).

The bill takes effect June 1, 2004.

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 Unfair and Deceptive Trade Practices Act cannot be quantified beforehand, but are 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: Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act. In addition to the civil damages remedies available under the Consumer Protection Act, 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 the greater of $500 or actual damages sustained as a result of the violation. Each prohibited telephone solicitation and each prohibited practice during a telephone solicitation is a violation of the bill. The bill requires the Office of the Attorney General to report to specified committees by July 1, 2005 on the status of the enforcement of the bill's provisions.

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 National Do Not Call Registry. A state must pass a law adopting the National Do Not Call Registry in order for its state attorney general to enforce the registry in state courts.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine whether there are "reasonable grounds" to believe that a violation of the Act has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce the Act. Violators of the Act are also subject to: (1) civil penalties of $1,000 for the first violation and $5,000 for subsequent violations; and (2) criminal sanction as a misdemeanor, with a fine of up to $1,000 and/or up to one year's imprisonment.

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 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. A three-judge panel of the U.S. Court of Appeals for the Tenth Circuit reversed the lower court's stay, allowing the registry to be enforced. The court has not yet ruled on the First Amendment claims, but in its decision to grant the stay, the court stated that there is a "substantial likelihood" that FTC will be able to show that the national registry directly advances the government's "substantial interests," is "narrowly tailored," and will overcome the First Amendment challenges.

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 of extreme violations 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, 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): Office of the Attorney General, Department of Legislative Services

Fiscal Note History: First Reader - February 3, 2004
ncs/mdr Revised - Senate Third Reader - March 22, 2004
Revised - Enrolled Bill - May 4, 2004

Analysis by: Ryan Wilson

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