

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 523
Finance

(Senator Brochin)

Telephone Solicitation - Prohibitions on Automated Calls

This bill prohibits a person from using an automated dialing system with a prerecorded message to call a residential telephone number that is registered with the National Do-Not-Call Registry under the Maryland Telephone Consumer Protection Act. The bill also prohibits a person from using an automated dialing, push-button, or tone-activated address signaling system with a prerecorded message to promote a political campaign or any use relating to a political campaign. Violators of this latter prohibition are guilty of a misdemeanor and subject to maximum fines of \$1,000 for a first offense and \$5,000 for subsequent offenses. The bill's prohibitions do not apply to a governmental unit that uses an automated dialing prerecorded message machine for emergency purposes; or a person who has a preexisting business relationship with, or the consent of, the person called.

Fiscal Summary

State Effect: Assuming that the Consumer Protection Division receives fewer than 50 complaints per year stemming from this bill, any additional workload could be handled with existing resources. The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations.

Local Effect: The criminal penalty provisions of this bill are not expected to significantly affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Current Law: A person may not use an automated dialing, push-button, or tone-activated address signaling system with a prerecorded message to:

- solicit persons to purchase, lease, or rent goods or services;
- offer a gift or prize;
- conduct a poll; or
- request survey information under specified conditions.

The sender of an automated dialing, push-button, or tone-activated address signaling call must disconnect the prerecorded message machine from the recipient's telephone line within five seconds after the call's termination.

Violators of these prohibitions are guilty of a misdemeanor and subject to maximum fines of \$1,000 for a first offense and \$5,000 for subsequent offenses. The prohibitions do not apply to a governmental unit that uses an automated dialing prerecorded message machine for emergency purposes; or a person who has a preexisting business relationship with, or the consent of, the person called.

Violation of Maryland Telephone Consumer Protection Act is an unfair or deceptive trade practice under the Maryland Consumer Protection Act. An individual injured by a violation of the Telephone Consumer Protection Act may also bring an action against a violator to recover reasonable attorney's fees and the greater of: (1) \$500 for each violation; or (2) actual damages.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the 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 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.

Under regulations issued jointly by the Federal Trade Commission (FTC) and the Federal Communications Commission (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.

Additional Information

Prior Introductions: None.

Cross File: HB 652 (Delegate Morhaim, *et al.*) – Economic Matters.

Information Source(s): Office of the Attorney General, State Board of Elections, Public Service Commission, Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2007
ncs/jr

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