

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO.: 2864-07
BILL NO.: HCS for HB Nos. 1172, 1501, 1633, 1440, 1634, 1177 and 1430
SUBJECT: Telecommunications; Consumer Protection
TYPE: Original
DATE: February 22, 2000

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
General Revenue	less than (\$100,000)	less than (\$100,000)	less than (\$100,000)
Telemarketing Data- base Revolving Fund*	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> State Funds	less than (\$100,000)	less than (\$100,000)	less than (\$100,000)

*Costs and revenues net to \$0.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 9 pages.

FISCAL ANALYSIS

ASSUMPTION

In a similar previous proposal, officials from the **Office of the Attorney General (AGO)** assume the proposal would require their agency to establish and begin operation of a database of telephone numbers of residential subscribers who object to receiving telephone solicitations. The AGO would be required to create rules governing the establishment of the database by January 1, 2001, with the database becoming operable no later than February 1, 2001. The AGO anticipates that a high volume of people would sign up for inclusion in the database; however, the exact number of subscribers is impossible to ascertain. For purposes of this fiscal note, the AGO assumes the number of subscribers would likely exceed 100,000 persons. The AGO would require two additional Investigators (\$25,000 each per year), equipment and operating expenses to carry out the provisions of the proposal with an estimated cost of approximately \$92,000 per full fiscal year to the General Revenue Fund. The proposal would also allow the AGO to establish a fee for subscription to and access of the database. The "Telemarketing Database Revolving Fund" would be created in the state treasury to be used exclusively by the AGO to promote, develop, and maintain the telemarketing database. The AGO assumes that the subscription and access fees collected would be adjusted to adequately cover all costs associated with this proposal. Therefore, the AGO assumes the proposal would result in a net fiscal impact of zero for their agency.

Oversight assumes that the state of Georgia currently has similar legislation in place in their state. Based on information provided to the Missouri Secretary of State's office by Georgia officials, twenty-seven staff answered the toll-free telephone number and three staff processed mail during the first three months the "Do Not Call List" was in operation. During the first month that the database and toll-free telephone number were in operation in Georgia, 20,000 residents enrolled on the list. There were 60,000 enrollees during the second month, and 15,000 enrollees during the third month. Eventually, the number of residents enrolling on the list in Georgia leveled out to around 5,000 per month. In response to a similar proposal which would require the Missouri Secretary of State's (SOS) office to organize the telemarketing database, SOS officials assumed they would need 15 temporary clerical positions during the first several months that Missouri's database and toll-free number were in operation to handle the influx of telephone calls by Missouri residents wanting to register. According to the Public Service Commission, there are 3.5 million residential telephone lines in Missouri. Based on data obtained from Georgia, if 5% of the residential telephone lines in Missouri subscribed to the database, there would be approximately 175,000 enrollees. Therefore, Oversight assumes that the initial costs incurred by the AGO could be significantly greater than those reported by the AGO. However, the proposal would allow the AGO to establish the fees for subscription to and

ASSUMPTION (continued)

access of the database. Oversight assumes that the fees established by the AGO would be designed to adequately cover all costs associated with the database. Overall, although the costs incurred could exceed those presented by the AGO, Oversight assumes that the revenues would be adjusted to result in a net fiscal impact of zero.

Officials from the **Office of the Secretary of State (SOS)** assume the proposed legislation would require the printing of additional pages in the *Missouri Register* and the *Code of State Regulations* and have estimated a publishing cost of \$2,289.50 for FY 01. Additionally, future costs are unknown and depends upon the frequency and length of rules filed, amended, rescinded or withdrawn.

While this bill alone would not require SOS to acquire additional staff, SOS assumes the cumulative effect of other bills that require rulemaking may, in the aggregate, necessitate additional staff.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriations process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Office of State Courts Administrator (CTS)**, **Office of the State Treasurer (STO)** and the **Department of Economic Development -Division of Credit Unions (DCU)** assume the proposed legislation would have no fiscal impact on their agencies.

In a similar previous proposal, officials from the **Office of Prosecution Services (OPS)** assumed the proposal would have no fiscal impact on their agency. OPS assumes the proposal could have an unknown fiscal impact on local prosecutors; however, OPS assumes that any costs incurred would be minimal and could be absorbed with existing resources.

In a similar previous proposal, officials from the **Office of the Cole County Prosecuting Attorney** assumed the proposed legislation would not have a significant fiscal impact on their budget.

In a similar previous proposal, the **Office of the State Public Defender (SPD)**, **Department of Economic Development - Office of Public Counsel (OPC)** and the **Department of Public Safety – Missouri State Highway Patrol (MHP)** assumed the proposal would have no fiscal

ASSUMPTION (continued)

impact on their agencies.

In response to a similar proposal, the **Department of Economic Development -- Public Service Commission (PSC)** assumed there would be no fiscal impact on their agency. However, PSC has verbally indicated that this proposal, as written, could fiscally impact their agency if residential subscribers are required to contact the PSC to object to receiving telephone solicitations. **Oversight** assumes that the Attorney General would be responsible for the operation and compilation of the database and that any additional workload on the PSC would be minimal and could be absorbed with existing resources.

In a similar previous proposal, officials from the **Department of Corrections (DOC)** assumed the proposal could have a minimal impact on the prison and/or probation populations, as new charges could be brought under existing merchandising practice laws. However, DOC assumes that the fiscal impact would be minimal and could be absorbed with existing resources. DOC further assumes that the need for additional capital improvements or rental space is not anticipated at this time. It should be noted that the cumulative effect of various new legislation, if adopted, could result in the need for additional capital improvements funding if the total number of new offenders exceeds current planned capacity. **Oversight** assumes the proposal could result in more offenders being incarcerated or placed on probation. Additional costs for supervision and care by the DOC cannot be determined, but would likely be less than \$100,000 annually.

	FY 2001 (10 Mo.)	FY 2002	FY 2003
<u>FISCAL IMPACT - State Government</u>			
GENERAL REVENUE FUND			
<u>Costs – Attorney General (AGO)</u>	(\$41,667)	(\$51,250)	(\$52,531)
Personal Service (2 FTE)	(12,813)	(15,759)	(16,153)
Fringe Benefits	<u>(37,333)</u>	<u>(24,823)</u>	<u>(25,568)</u>
Equipment and Expense	(\$91,813)	(\$91,832)	(\$94,252)
<u>Income – Transfers from Telemarketing Database Revolving Fund</u>	\$91,813	\$91,832	\$94,252
<u>Costs - Department of Corrections (DOC)</u>	less than (\$100,000)	less than (\$100,000)	less than (\$100,000)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>less than</u> <u>(\$100,000)</u>	<u>less than</u> <u>(\$100,000)</u>	<u>less than</u> <u>(\$100,000)</u>

(Continued)

**TELEMARKETING DATABASE
 REVOLVING FUND**

<u>Income – Fee Collections*</u>	\$91,813	\$91,832	\$94,252
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<u>Costs – Distributions to AGO</u>	<u>(91,813)</u>	<u>(91,832)</u>	<u>(94,252)</u>
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**ESTIMATED NET EFFECT ON
 TELEMARKETING DATABASE
 REVOLVING FUND**

<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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* **NOTE:** The AGO assumes fees would be based on database costs.

<u>FISCAL IMPACT - Local Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
	\$0	\$0	\$0

FISCAL IMPACT - Small Business

Certain businesses that participate in telemarketing solicitation efforts could be fiscally impacted as a result of this proposal.

DESCRIPTION

This substitute establishes telemarketing regulations and a no call database and regulates electronic mail (e-mail) solicitation. In its main provisions, the substitute:

- (1) Exempts state-regulated credit unions from current law prohibiting certain unlawful merchandising practices. Current law exempts companies or institutions under the regulation of the Department of Insurance or the Division of Finance;
- (2) Requires telemarketers to disclose certain information when selling merchandise or promoting prizes, including the purpose of the call, the name of the telemarketer and seller, and the total cost of merchandise prior to payment;

DESCRIPTION (continued)

- (3) Prohibits certain acts, including requesting a fee to remove derogatory information from a person's credit record, knowingly calling persons who have previously stated that they do not want to receive telemarketing calls from that seller, and misrepresenting material aspects about the merchandise being offered for sale;

- (4) Prohibits abusive conduct such as the use of obscene language, intimidation, and harassment;
- (5) Allows a consumer to give certain forms of written or oral authorization for payment from his or her checking or savings account;
- (6) Requires telemarketers to keep specified records for 24 months from the date the record is produced;
- (7) Makes violation of some of the telemarketing provisions a class A misdemeanor and violation of others a class D felony. Second and subsequent class D felony convictions will be class D felonies punishable by the term of years and a fine of up to \$5,000 or a fine equal to triple the gain, with no limit on the amount recoverable;
- (8) Allows consumers who have suffered a loss or harm due to violations of the telemarketing provisions to recover actual and punitive damages, attorney's fees, court costs, and other lawful remedies;
- (9) Exempts the following from the telemarketing requirements:
 - (a) telephone calls where the sale of goods or services is not completed and payment is not required until after a face-to-face sales presentation by the telemarketer;
 - (b) telephone calls initiated by the consumer that are not the result of any advertisement by a seller or telemarketer, are in response to media advertisements other than direct mail or telemarketing, and are in response to direct mail solicitations and catalog mailings;
 - (c) telephone calls or messages to persons who have given prior express permission, persons with whom the caller has an established business relationship as defined in the substitute, or by or behalf of any entity over which either a state or federal agency has regulatory authority with respect to telemarketing practices, as long as the agency has promulgated rules regulating telemarketing practices;

DESCRIPTION (continued)

- (10) Requires the Attorney General to receive telemarketing complaints and to forward complaints against entities regulated by state or federal agencies with respect to telemarketing practices to the respective agencies for investigation. All other complaints will be resolved by the Attorney General.

(11) Establishes a statewide no call database for residential subscribers operated by the Attorney General to be operational by February 1, 2001;

(12) Authorizes the Attorney General to make rules, including specifying methods by which residential subscribers can give or revoke notice to the Attorney General regarding their objections to receiving telephone solicitations, methods by which persons wanting to make telephone solicitations will obtain access to the database, and establishing a fee not to exceed \$100 per year per person or entity for such access;

(13) Requires the Attorney General to include the Missouri database in any national database, if established as authorized by federal law;

(14) Prohibits making telephone solicitations to any residential subscriber who has given notice to the Attorney General that he or she objects to receiving telephone solicitations;

(15) Creates the Telemarketing Database Revolving Fund in the state treasury to be used exclusively by the Attorney General to promote, develop, and maintain a no call database;

(16) Authorizes the Attorney General to initiate proceedings for any knowing violation or threatened knowing violation of the no call provisions;

(17) Authorizes any residential subscriber listed in the database who receives more than one telephone solicitation in any 12-month period from the same person or entity in violation of the no call provisions to bring an action to enjoin the violation and to recover actual or monetary loss from the violation or up to \$5,000 in damages for each violation, whichever is greater;

(18) Provides a defense in any action or proceeding that the defendant has established and implemented, with due care, reasonable practices and procedures to prevent effectively such violations;

DESCRIPTION (continued)

(19) Limits the time within which an action may be brought to 2 years after the violation occurred or after more than 2 years after the termination of any proceeding or action by the state, whichever is later;

(20) Authorizes a Missouri court to exercise personal jurisdiction over any nonresident as to an action related to a violation;

(21) Exempts communications:

(a) To residential subscribers that have given prior express invitation;

(b) By any person or entity with whom the residential subscriber has had a business contact within the past 60 days or a current business or personal relationship; or

(c) By or on behalf of any entity over which a state or federal agency has regulatory authority with respect to business practices and which maintains a no call list;

(22) Prohibits transmitting unsolicited commercial e-mail messages from a computer located in Missouri to an e-mail address held by a Missouri resident and e-mailing advertising material without a toll-free telephone number or valid sender-- operated e-mail address where the recipient can notify the sender not to e-mail further unsolicited documents;

(23) Makes a violation of the e-mail solicitation provisions an unlawful merchandising practice under current merchandising practices law, a class D felony. Damages to the recipient of unsolicited e-mail in violation of these provisions are \$500 or actual damages, whichever is greater. Damages to an interactive computer service resulting from a violation are \$1,000 or actual damages, whichever is greater;

(24) Authorizes interactive computer services to block the transmission through their services of any commercial e-mail that they reasonably believe is in violation of the provisions and releases from liability any interactive computer service for any action voluntarily taken in good faith to block such transmissions; and

(25) Requires the e-mail solicitation provisions to expire on the date that federal law prohibits or otherwise regulates the transmission of unsolicited commercial e-mail messages.

DESCRIPTION (continued)

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General

MLW:LR:OD:005 (9-94)

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Office of the Secretary of State
Office of State Courts Administrator
Office of the State Treasurer
Department of Economic Development - Division of Credit Unions
Office of Prosecution Services
Office of the Cole County Prosecuting Attorney
Office of the State Public Defender
Department of Economic Development - Office of Public Counsel
Department of Public Safety – Missouri State Highway Patrol
Department of Economic Development - Public Service Commission
Department of Corrections



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Director
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