

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3468-08
Bill No.: SCS for SB 613, 1030 & 899
Subject: Consumer Protection; Telecommunications
Type: Original
Date: March 3, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator** assume there will be no fiscal impact on the Courts.

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this proposal for Administrative Rules is less than \$1,500. The SOS recognizes this is a small amount and does not expect additional funding would be required to meet these costs. However, SOS also recognizes that many such bills may be passed in a given year and that collectively the costs may be in excess of what the SOS can sustain with their core budget. Any additional required funding would be handled through the budget process.

Officials from the **Office of Attorney General (AGO)** assume that the costs can be absorbed with existing resources. To the extent additional costs accrue, the AGO anticipates that these costs will be offset by the fee paid by additional businesses signing up to obtain the list (for example, those businesses that only solicit by fax) as well as additional recoveries by the AGO against companies that violate the No Call law. AGO assumes that any additional costs that might accrue would be allocated from the Merchandising Practices Revolving Fund pursuant to

ASSUMPTION (continued)

the budget process.

In response to SB 1030, officials from the **Department of Corrections (DOC)** assume they cannot currently predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

Officials from the **Department of Economic Development - Public Service Commission (PSC)** state the PSC will have to modify its existing rule on the release of customer proprietary network information to maintain consistency with legislation, but that there will be no fiscal impact to their agency.

According to officials from the **Department of Corrections (DOC)**, if additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY05 average of \$39.13 per inmate, per day or an annual cost of \$14,282 per inmate) or through supervision provided by the Board of Probation and Parole (FY03 average of \$3.15 per offender, per day or an annual cost of \$1,150 per offender).

The DOC does not anticipate the need for capital improvements at this time. It must be noted that the cumulative effect of various new legislation, if passed into law, could result in the need for additional capital improvements funding if the total number of new offenders exceeds current planned capacity.

The following factors contribute to DOC's minimal assumption:

- DOC assumes the narrow scope of the crime will not encompass a large number of offenders;
- The low felony status of the crime enhances the possibility of plea-bargaining or imposition of a probation sentence; and
- The probability exists that offenders would be charged with a similar but more serious offense or that sentences may run concurrent to one another.

In summary, supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

ASSUMPTION (continued)

Officials from the Office of the State Public Defender did not respond to Oversight's request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2007	FY 2008	FY 2009
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2007	FY 2008	FY 2009
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

SECTIONS 407.1095; 407.1098; 407.1101; 407.1104

The proposed legislation allows residential and business cell phone users to voluntarily sign up with the no-call list kept and maintained by the attorney general's office and adds faxes to the list of unwanted solicitations included on that no call list.

SECTION 550.223

The proposal adds telephone records to the forms of identification that can be used to commit identity theft.

SECTION 550.222

The proposal defines a telephone record as "any proprietary or personally identifiable information retained by a telecommunications carrier about its wireless or wireline service customers.

The proposed legislation creates the crime of knowingly obtaining, receiving, or selling

DESCRIPTION (continued)

telephone records without a customer's consent. However, the proposal shall not preclude official actions of law enforcement, lawful use of the records to provide service, use of records pursuant to the Victims of Child Abuse Act of 1990, or emergency use of records by the government to prevent death or serious injury to a person. The proposal lays out penalties for such a violation; the crime is a felony that is punishable by a fine or imprisonment. The penalty for such crime increases based on the number of telephone records obtained, received, or sold.

A telecommunications carrier or a customer is allowed to recover actual damages, illicit profits, and punitive damages from persons violating this proposed legislation. There is a two-year statute of limitations on such civil actions.

Under the proposal, telecommunications carriers that maintain telephone records shall establish reasonable procedures to protect against fraudulent disclosure of such records; reasonable procedures shall mean complying with the Customer Proprietary Network Information in section 222 of the Communications Act of 1934, as amended. The proposal does not create any new cause of action against telecommunications companies.

The provisions pertaining to the selling of call logs and identity theft (Sections 550.222 and 550.223) have an emergency clause.

This legislation is not federally mandated and would not require additional capital improvements or rental space.

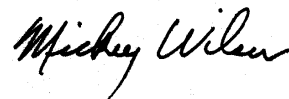
Regarding the subject of duplication, the PCS states the Federal Communications Commission and the Federal Trade Commission maintain a national do-not-call registry for residential consumers. The Federal Communications Commission, through 47 CFR 64 Subpart U has established guidelines for the release of customer proprietary network information (CPNI), which is defined as information that relates to the quantity, technical configuration, type, destination and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the customer-carrier relationship and information contained in the bills pertaining to telephone service. The PSC, through 4 CSR 240-33.160, has also implemented guidelines addressing the release of customer proprietary network information. The federal rules apply to wireline and wireless providers. The state rules apply to wireline providers. Also, the FCC is currently reviewing the issue of the inappropriate sale of wireless records.

SOURCES OF INFORMATION

Department of Economic Development
Public Service Commission
Office of Prosecution Services
Department of Public Safety
Office of the Director
Office of Attorney General
Office of State Courts Administrator
Office of Secretary of State
Administrative Rules Division
Department of Corrections

NOT RESPONDING

Office of State Public Defender



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Director
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