

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4830-08
Bill No.: SCS for HCS for HB 1632
Subject: Consumer Protection: Telecommunications
Type: Original
Date: April 28, 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 7 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 Secretary of State** indicated there is no fiscal impact to their agency resulting from this proposed legislation.

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 the budget process.

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.

Officials from the **Department of Economic Development - Office of Public Counsel** stated this proposal would have no fiscal impact on their agency.

SECTION 407.413

Officials from the **Department of Public Safety - Director's Office** and the **Division of Alcohol and Tobacco Control** each assume the proposal will not fiscally impact their respective agencies.

SECTION 570.222

In response to an earlier version of this proposal, officials from the **Department of Corrections (DOC)**, stated that 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.

Officials from the **Office of Prosecution Services**, in an earlier version of this proposal, stated

ASSUMPTION (continued)

this proposal will not have a significant fiscal impact on county prosecutors, although it may lead to an increase in prosecutions/caseloads.

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

Small businesses in the brewing, manufacturing or importing of beer may be fiscally impacted as a result of this proposal.

DESCRIPTION

SECTION 407.413

This section of the proposed legislation defines "brand" and "brand extension" and specifies that a brewer or importer must offer to assign a brand extension to a wholesaler to whom he or she granted the exclusive sales territory for the brand if the brand extension was not assigned before August 28, 2006.

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 570.222

The proposal defines a telephone record as "any proprietary or personally identifiable information

DESCRIPTION (continued)

retained by a telecommunications carrier about its wireless or wireline service customers. The proposed legislation creates the crime of knowingly obtaining, receiving, or selling 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.

SECTION 550.223

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

SECTION 1

Upon the written request of a residential subscriber, as defined in section 407.1095, RSMo, a wireless telephone provider shall not issue the wireless phone records of the subscriber via any electronic means. Such provider shall only transmit such records through United States mail to the registered address of the subscriber.

The provisions pertaining to the selling of call logs and identity theft (Sections 570.222 and 570.223) 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

DESCRIPTION (continued)

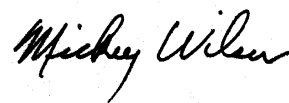
consumers. The Federal Communications Commission, through 47 CFR 64 Subpart U has established guidelines for the release of customer proprietary network information (CPNI), which is defined as information that relates to the quantity, technical configuration, type, destination and amount of use of a 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 Public Counsel
Office of Prosecution Services
Department of Public Safety
 Office of the Director
 Division of Alcohol and Tobacco Control
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



Mickey Wilson, CPA

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