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FISCAL IMPACT REPORT

SPONSOR: Coll DATE TYPED: 2/24/23 HB 803

SHORT TITLE: Consumer No-Call Act SB _____

ANALYST: Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

Duplicates SB 573

SOURCES OF INFORMATION

Responses Received From

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 803 is a Do-Not-Call bill establishing a registry of New Mexico residents who do not want to receive calls from telemarketers.

HB 803 utilizes the Do-Not-Call database to be set up and maintained by the Federal Trade Commission (FTC) as the New Mexico no-call registry. The FTC will allow New Mexicans to register their home numbers at no cost by either calling a toll free number or by logging on to a special internet site. HB 803 will, with certain limited exceptions, prohibit telephone solicitations of New Mexico residents on the FTC no-call list. The list of New Mexicans on the FTC no-call data base is updated quarterly and those who make telephone solicitations may obtain it directly from the FTC.

HB 803 also prohibits telemarketing calls between 6:00 P.M. and 9:00 A.M., requires disclosure of the fact that the call is a telephone solicitation within 15 seconds of a call being answered, prohibits the misrepresentation of the purpose of a call and blocking or circumventing caller identification devices, and makes violating the Do-Not-Call provisions of the bill a violation of the Unfair Practices Act (UPA)

HB 803 contains a contingent repeal clause that repeals the sections of the bill creating a New Mexico Do Not Call registry in the event that the Federal Communication Commission's (FCC) proposed national Do-Not-Call registry does go into effect. The FCC's registry, if implemented, will be applicable to almost all telemarketing activity affecting New Mexicans. The FTC no-call rule, in contrast, does not apply to intrastate calls or to many industries generating a significant proportion – if not the majority – of telemarketing calls.

Significant Issues

- State Do-Not-Call registries have been around for several years and currently exist in at least 27 states. In the past 14 months both the FTC and the FCC have proposed the creation of a national Do-Not-Call registry, and the FTC has formally approved such a registry. These proposals represent a significant departure from past federal policies regarding telephone solicitations, and reflect the conclusion by both agencies that those policies had not adequately protected the privacy interests of residents in their own homes.
- In 2002, the New Mexico Legislature passed Senate Joint Memorial 4, which directed the AGO to conduct a study of telemarketing in New Mexico. As part of its study, the office commissioned a scientific poll of residents' attitudes about telemarketing. The office also conducted a town hall meeting on the subject. In both instances, residents voiced their dislike of unsolicited telephone solicitations, and expressed strong support for a state Do-Not-Call registry.
- Courts have long recognized the interest of government in protecting the privacy rights of persons in their home. However, telephone solicitors have challenged some state Do-Not-Call registries, and most recently, the FTC's Do-Not-Call rule, on the ground that such laws abridge free speech rights guaranteed by the 1st Amendment to the U.S. Constitution. The fact that the protections against unwanted telephone solicitations afforded by Do-Not-Call laws and HB 803 apply only to residents who request that the government place their number on a no-call list, distinguishes these challenges from most other 1st Amendment challenges to government regulation. This remains a somewhat unsettled area of the law.
- The FTC approved amendments to its Telephone Sales Rule in December of 2002 creating a national Do-Not-Call registry. Companies subject to the jurisdiction of the FTC and are not otherwise exempt, are prohibited from calling phone numbers on the national registry. The FCC is expected to rule on its Do-Not-Call proposal by the end of 2003. If adopted, the FCC Do-Not-Call rule would apply to most if not all of the telephone solicitations outside the scope of the FTC no-call rule.
- The creation and maintenance of do-not-call databases has proven to be expensive in other states. By utilizing the FTC registry, this bill allows the state to avoid these expenses and to also avoid the need to assess fees to both residents who want their telephone numbers placed on the proposed state no-call list, and telephone solicitors who must obtain the list. The FTC, has reported that there will be no charge for consumers to register their phone number on its Do-Not-Call registry, and no charge to businesses or others to obtain the registered numbers from one area code.

- HB 803 bill exempts the following callers from the prohibition against calling residential numbers included in the New Mexico no-call list: (1) calls to residents who have given their express prior permission; (2) calls to residents with whom the caller has an established business relationship; (3) calls made by unpaid volunteers on behalf of a tax-exempt organization status under Section 501(c)(3) of the Internal Revenue Code of 1986; (4) calls made in support or opposition to a political candidate or ballot issue; and (5) calls made to obtain the resident's opinion. Some state Do-Not-Call laws provide for different exemptions, as does the FTC no-call rule.

ADMINISTRATIVE IMPLICATIONS

HB 803 requires the AGO to promulgate rules to implement the provision of the bill creating a state Do-Not-Call list.

TECHNICAL ISSUES

The AGO has noted the following:

Section 9. Two technical issues arise from language in the paragraph beginning on page 8, line 17 of HB 803. This paragraph amends Section 57-12-22 of the Unfair Practices Act (UPA) to make telephone solicitations to persons on the proposed no-call registry a violation of the UPA. Language in this paragraph appears to conflict with the other provisions of the bill.

- The first issue stems from the use of the phrase “seller-initiated telephone sale” which could be construed to limit this section to telephone calls that result in a sale. This problem would be eliminated by an amendment that substitutes the phrase “telephone solicitation” for “seller initiated telephone sale” and specifies that “telephone solicitation” has the meaning stated in Section 2 of the bill.
- The second issue arises from language used in this paragraph to identify those persons who are not to be solicited by phone because their number is on the proposed Do-Not-call registry. HB refers to a “residential subscriber who has given notice to the attorney general of the of the subscriber’s objection to receiving telephone solicitations...”. However, the bill provides that the Do-Not-Call registry established and maintained by the FTC shall serve as the New Mexico registry for purposes of the act. Residents who want their numbers listed on the FTC registry will do so by contacting the FTC directly, and not by giving notice to the AGO. This problem would be eliminated by an amendment that substitutes language that refers instead to a “residential subscriber whose telephone number has been on the national do-not-call registry established by the federal trade commission, for at least three months prior to the date the call is made.”

DW/njw