

Legislative Analysis



TELEPHONE AND ELECTRONIC CAMPAIGNING (INCLUDING "ROBO CALLS")

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House Bill 4985 (Substitute H-1)
Sponsor: Rep. Lisa Brown
Committee: Ethics and Elections

First Analysis (6-4-09)

BRIEF SUMMARY: The bill would require that a communication advocating the election or defeat of a candidate that was designed to contact electors through automated telephone (customarily called "robo calls"), electronic mail, or other electronic means clearly state the name of the person paying for the communication and any disclaimers at the beginning of the communication. The bill also would prohibit such communication entirely between the hours of 8 p.m. and 9 a.m. Eastern Standard Time, and between 7 p.m. and 8 a.m. Central Standard Time (in the recipient's location).

FISCAL IMPACT: House Bill 4985 would have an indeterminate fiscal impact on the Department of State and no fiscal impact to local units of government. Any fiscal impact to the Department of State would be related to increased administrative costs stemming from the bill's provisions requiring that the department to promulgate rules regulating the size and placement of an identification or disclaimer.

To the extent that the bill increased the numbers of misdemeanor convictions, it could increase local costs of jail incarceration or misdemeanor probation, both of which vary by jurisdiction. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

THE APPARENT PROBLEM:

Modern political campaigns often use "new media"—automated telephone calls and electronic mail—to define candidates. The ads can be designed as either positive or negative. Indeed, many have the reputation for distorting the truth about candidates' voting records, their intentions if elected, and their personal lives.

Generally, voters find the automated telephone calls (customarily referred to as "robo" calls) to be intrusive, and many report they find them to be infuriating. According to committee testimony, the ads cost about two cents per call, and a large bank of automated phones can disseminate thousands of recorded calls each hour.

Currently under the law, "robo" calls have escaped the identification and disclaimer requirements of the Michigan Campaign Finance Act. This proposed legislation proposes some accountability for these kinds of telephonic and Internet-based campaign communications. It would require that such communications include a disclaimer that

identifies the individual or committee responsible for them, imposing the same requirements for "robo" calls that are now required for a radio ad.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Campaign Finance Act to require that a communication advocating the election or defeat of a candidate that was designed to contact electors through automated telephonic, electronic mail, or other electronic means clearly state the name of the person paying for the communication.

This applies to cases in which existing Section 47 does not apply. Section 47 requires that campaign materials (billboards, placards, posters pamphlets, and other printed material) contain the name and address of the person paying for them, and that campaign radio and television ads contain the name of the person paying for them, and also a disclaimer or an authorization by the candidate.

Telephonic and Electronic Communications. Under the bill, if the communication advocates the election or defeat of a candidate and was an independent expenditure not authorized in writing by that candidate's committee, then the communication would have to clearly state the following disclaimer: "Not authorized by any candidate committee." If the communication advocated the election or defeat of a candidate and was not an independent expenditure, but was paid for by a person other than the candidate whose election or defeat it advocated, then the communication would have to clearly state the following disclaimer: "Authorized by _____(name of candidate or name of candidate committee)."

Under the bill, these telephonic communications must disclose the name of the person paying for the communication and any disclaimers at the beginning of the telephonic communication. Further, that telephonic communication could not take place between the hours of 8 p.m. and 9 a.m. Eastern Standard Time, or between 7 p.m. and 8 a.m. Central Standard Time, based upon the time zone within which the recipient of the telephonic communication is located.

The bill specifies that for a visual communication, the Secretary of State would be required to promulgate rules regulating the size and placement of an identification or disclaimer.

A person who for the first time knowingly violated the new provisions would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days and/or a fine of not more than \$500. For a second violation, the person would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$1,000. For a third or subsequent violation, the person would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$2,500.

MCL 169.248

BACKGROUND INFORMATION:

A similar bill, House Bill 6133, was introduced by Rep. Mike Nofs during the 2005-2006 legislative session. It passed the House of Representatives by a vote of 105 to 1 on September 13, 2006. The bill died in the Senate Committee on Government Operations at the end of the two-year legislative session. A similar bill was once again introduced in the 2007-2008 legislative session, sponsored by Rep. Michael Sak. It passed the House by a vote of 107 to 0 on March 13, 2007, but died in the Senate Committee on Campaign and Election Oversight at the end of the two-year legislative session.

ARGUMENTS:

For:

House Bill 4985 is an important first step in providing accountability for campaign advertising done via "new media." Currently, automated political phone calls that infuriate countless voters have escaped the identification and disclaimer requirements of the Michigan Campaign Finance Act. This bill corrects that omission, and imposes the same requirements for "robo" calls that are now required for radio ads. Under the bill, "robo" calls, website communication, and email would have to meet identification and disclaimer requirements. In addition, the bill would limit the hours during which "robo" calls could be made, prohibiting them during the late night. The people who receive such calls or information should know, up front, the names of the organizations sponsoring political campaign communications, no matter what media is used to disseminate the ads.

Response:

During committee testimony on a similar bill during the last legislative session, the Michigan Campaign Finance Network (which supported the bill) pointed out that it is important to recognize the limitations of the bill.

The Network's spokesman noted that under the law, if any campaign ad or other communication merely defines a political candidate, but makes no reference to voting at the polls, then the Michigan Campaign Finance Act makes no requirement that the sponsoring committee reveal its contributors. Neither must the committee reveal any information about its finances as pertains to those ads. For example, having compiled records from public television stations, the Campaign Finance Network can report that the Michigan Democratic Party, the Michigan Republican Party, the Michigan Chamber of Commerce, the Republican Governors' Association, and Citizens for Traditional Values spent nearly \$20 million for television advertisements that defined candidates DeVos and Granholm during the 2006 gubernatorial election. Yet, because those ads merely defined the candidate—as either good or bad—without making reference to voting at the polls, there is no public record in Michigan of who gave those committees the money they used to pay for those ads.

This bill would require campaign ads transmitted via the "new media" to have the names of their authorizers revealed. However, it would not require that the names of those paying for the ads be made known.

Against:

According to testimony offered on a similar bill during the last legislative session by the Michigan Chamber of Commerce, six states—Arkansas, Indiana, Minnesota, Montana, North Dakota, and Wyoming—have recently extended their state "do-not-call" laws to automated political calls. In three of those states, the laws have been challenged in the courts, their opponents arguing that they unconstitutionally limit non-commercial speech under the First Amendment to the U. S. Constitution. However, to date, the courts have found in favor of a state's authority to regulate automated calls used in political campaigns.

Michigan should follow the lead of these states, to allow voters to place their names on the state's do-not-call registry, and extend that registry to political robo calls.

Response:

Although Michigan perhaps should extend its do-not-call law to include automated political calls, it should first also adopt this bill to require that such calls meet identification and disclaimer requirements.

POSITIONS:

The Secretary of State supports the bill. (5-27-09)

The Michigan Campaign Finance Network supports the bill. (5-27-09)

Common Cause supports the bill. (6-3-09)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.