

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 33 Telephone Solicitation
SPONSOR(S): Jordan and others
TIED BILLS: IDEN./SIM. BILLS: SB 322

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Committee on Agribusiness, 8 Y, 0 N, Kaiser, Reese. Rows 2-5 are empty.

SUMMARY ANALYSIS

HB 33 prohibits certain telephone solicitation calls on behalf of candidates for federal, state, or local political office, committees of continuous existence, or other political entities. The particular calls prohibited involve calls made to a telephone number on the Department of Agriculture and Consumer Services' 'no sales solicitation calls' list using an automated system that selects or dials telephone numbers or using a device which plays a recorded message when a connection is completed to the number called.

The bill does not appear to have a fiscal impact on state or local governments. The effective date of this legislation is July 1, 2007.

HB 33 has one amendment traveling with the bill. For an explanation of this amendment, please refer to Section IV. (Amendments/Council Substitute Changes).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: The bill prohibits automated calls of a political nature to individuals on the Department of Agriculture and Consumer Services' "no sales solicitation calls" list.

B. EFFECT OF PROPOSED CHANGES:

Approximately 40 states have enacted telemarketing laws with do-not-call list requirements for consumers who do not wish to receive telemarketing sales calls at home. Some of the laws predate passage of the Telephone Consumer Protection Act of 1991 (TCPA), which restricts sales calls to telephone subscribers' homes. Florida was the first state to implement a state "do-not-call" registry, which preceded the Federal Communications Commission (FCC) and Federal Trade Commission's 2003 order establishing a national "do-not-call" registry.

Florida's "no sales solicitation calls" law currently has four exemptions: businesses with which a person has a current business relationship, newspapers, charities, and calls of a political nature.

Several states, including Florida, have a provision in their telemarketing law that separately addresses automatic dialing-announcing devices (ADADs). These devices are also known as "robo calls." The ADADs select and dial telephone numbers and working alone or with other equipment disseminate a prerecorded or synthesized voice message to the telephone number called.

Six states, Arkansas, Indiana, Minnesota, Montana, North Dakota, and Wyoming, have "robo call" laws broad enough to prohibit ADAD calls from political committees or campaigns. Existing Florida law does not prohibit "robo calls" from political committees or campaigns. The following table shows the "robo call" provision in each state's law applicable to calls from political parties or campaigns, citations to those provisions, and the penalties for violations.¹

| States | Prohibition | Penalty |
|------------------------|--|--|
| Arkansas § 5-63-204 | It is unlawful for anyone, in connection with a political campaign, to use an automated system that selects and dials telephone numbers and plays a recorded message when the called is completed. The prohibition does not apply to calls made in response to a call initiated by the recipient. | Class B misdemeanor and injunctions against future violations. |
| Indiana 24-5-14-5 | No one may use or connect to a telephone line an ADAD unless (1) the person called has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the recipient's consent before the message is delivered. | Class C misdemeanor, penalties for a deceptive act, and injunctions against future violations. |

¹ <http://www.cga.ct.gov/2006/rpt/2006-R-0717.htm>

| | | |
|--------------------------|---|--|
| Minnesota 325E. 27 | No one can use or connect an ADAD to a telephone line unless the (1) person called has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message (defined to mean any call regardless of its content); or (2) message is immediately preceded by a live operator who obtains the consent of the person called before the message is delivered. The prohibition does not apply to messages (1) from a school district to a student, parent, or employee; (2) from callers to people with whom they have a current business or personal relationship; or (3) advising employees of work schedules. | A civil penalty of up to \$ 25,000, injunctions against future violations, and damages |
| Montana 45-8-216 | No one may use an automated telephone system, device, or facsimile machine to select and dial telephone numbers and play recorded messages that, among other things, promote a political campaign or any use related to a political campaign. The prohibition does not apply if a live operator obtains the permission of the party called before the message is played. | A fine of up to \$ 2,500 |
| North Dakota 51-28-02 | No one can use or connect an ADAD to a telephone line unless the (1) person called has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message (defined to mean any call regardless of its content); or (2) message is immediately preceded by a live operator who obtains the consent of the person called before the message is delivered. The prohibition does not apply to a message (1) from a public safety agency notifying a person of an emergency; (2) from a school district to a student, parent, or employee; (2) from callers to people with whom they have a current business relationship; or (3) advising an employee of a work schedule. | The attorney general may impose civil penalties of up to \$ 2,000 for each violation, issue a cease and desist order, and ask for and receive court costs. |
| Wyoming 6-6-104 | No one may use an automated telephone system, device, or facsimile machine to select and dial telephone numbers and play recorded messages that, among other things, promotes a political campaign or any use related to a political campaign. The prohibition does not apply if the call is in response to an inquiry that the party called initiated. | A misdemeanor punishable by up to six months in prison, a \$ 750 fine, or both. |

The laws in Indiana², Minnesota³, and North Dakota⁴ have withstood constitutional challenges alleging free speech, commerce and preemption violations.

This legislation prohibits telephone solicitation calls on behalf of candidates for federal, state, or local political office, committees of continuous existence, or other political entities made to telephone numbers currently on the Department of Agriculture and Consumer Services' "no sales solicitation calls" list if the call involves an ADAD device.

C. SECTION DIRECTORY:

Section 1: Amends s. 501.059, F.S.; prohibits certain telephone solicitation on behalf of a candidate for a federal, state, or local political office, committee of continuous existence, or other political entity.

Section 2: Provides an effective date of July 1, 2007.

² *FreeEats.com, v. Indiana*, 2006 WL 3025810 (SD Ind.)

³ *State by Humphrey v. Casino Marking Group*, 491 N.W.2d 882 (Minn. 1992)

⁴ *State ex rel. Stenehjem v. FreeEats.com*. 712 N.W.2d 828 (2006 ND 84)

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See fiscal comments.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact on the private sector is unknown at this time. See fiscal comments.

D. FISCAL COMMENTS:

The Department of Agriculture and Consumer Services (department) must investigate any complaints concerning violations of these prohibited telephone solicitation calls, and solicitors found in violation could receive a civil penalty not to exceed \$10,000 per violation. Any revenues collected pursuant to these penalties would be deposited into the department's General Inspection Trust Fund. The number of complaints, verified violations and possible resulting penalties, however, are indeterminate at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect municipal or county government.

2. Other:

This bill may raise constitutional concerns relating to free speech. However, there is case law⁵ that has upheld a similar law in another state.

B. RULE-MAKING AUTHORITY:

Not applicable

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

⁵ *FreeEats.com v. Indiana*, 2006 WL 3025810 (SD Ind.)

D. STATEMENT OF THE SPONSOR

House Bill 33 Telephone Solicitation was drafted in response to the public outcry over the intrusive use of the unsolicited, automated, pre-recorded campaign calls; otherwise known as “robo calls”, particularly to those on the “Do Not Call” registry.

This bill is intended to only stop the “robo calls” from being placed to those who register on the “Do Not Call” registry. Political “robo calls” can still be made to anyone not on the “Do Not Call” registry.

Also, a candidate, campaign volunteer or any other person who wishes to make a call on behalf of candidates and political issues would still be able to do so, even to those registered on the “Do Not Call” registry, as long as they do not use an automated dialing-announcing device.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 7, 2007, the Committee on Agribusiness adopted one amendment to HB 33. The amendment permits organizations to place “robo calls” of a political nature to enrolled members of the organization.