



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

**Safeguard individual liberty:** The bill prohibits 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.<sup>1</sup>

<b>States</b>	<b>Prohibition</b>	<b>Penalty</b>
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.

<sup>1</sup> <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 Indiana<sup>2</sup>, Minnesota<sup>3</sup>, and North Dakota<sup>4</sup> have withstood constitutional challenges alleging free speech, commerce and preemption violations.

It does not appear any laws have been enacted in other states prohibiting political calls from live persons to persons on a "no-calls" list; nor does there appear to have been constitutional challenges to that particular issue, and, therefore, no court rulings.

The bill prohibits persons acting on behalf of a candidate for public office, or other political entity, from making politically oriented telephone calls to telephone numbers on the Department of Agriculture and Consumer Services' "no sales solicitation calls" list. Politically oriented telephone calls made by a live person and those made using an ADAD are prohibited.

The bill defines a "politically oriented telephone call" as an outbound telephone call, the purpose of which is to promote, advertise, campaign for or against, or solicit donations on behalf of any political candidate or political issue, or which uses in the call a political candidate's name.

<sup>2</sup> *FreeEats.com, v. Indiana*, 2006 WL 3025810 (SD Ind.)

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

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

C. SECTION DIRECTORY:

**Section 1:** Amends s. 501.059, F.S.; providing a definition for “politically oriented telephone call”; prohibiting a politically oriented telephone call to telephone numbers appearing on the “no sales solicitation calls” list; and, prohibiting person acting on behalf of a candidate for federal office from making “politically oriented telephone calls” using an automated system.

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

**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 law<sup>5</sup> that has upheld laws relating to “robo calls” in other states.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

N/A

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<sup>5</sup> *FreeEats.com v. Indiana*, 2006 WL 3025810 (SD Ind.); *State by Humphrey v. Casino Marketing Group*, 491 N.W.2d 882 (Minn. 1992); *State ex rel. Stenehjem v. FreeEats.com*, 712 N.W.2d 828 (2006 ND 84); *Van Bergen v. State of Minnesota*, 59 F. 3d 1541 (Cir. App. 8<sup>th</sup>, 1995); *Frisby v. Schultz* 487 U.S. 474, 108 S. Ct. 2495 (1988)