

## TELEPHONE AND ELECTRONIC CAMPAIGNING

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4239 (Substitute H-1)**  
**Sponsor: Rep. Michael Sak**  
**Committee: Ethics and Elections**

### First Analysis (3-7-07)

**BRIEF SUMMARY:** The bill would require that a communication relating to a candidate that was designed to contact electors through telephonic, electronic mail, or other electronic means clearly state the name and address of the person paying for the communication. The disclaimer would have to appear at the beginning of a telephonic communication. Further, a telephonic communication could not take place between the hours of 9 p.m. and 9 a.m.

**FISCAL IMPACT:** There would be an indeterminate amount of administrative costs to the Department of State as they would be required 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 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 relating to a candidate that was designed to contact electors through telephonic, electronic mail, or other electronic means clearly state the name and address of the person paying for the communication. The disclaimer would have to appear at the beginning of a telephonic communication. Further, a telephonic communication could not take place between the hours of 9 p.m. and 9 a.m.

The bill also would revise the identifying statement for radio and television campaign ads. Currently, the statement says, "Authorized by (Name of Candidate)." The bill would make the disclaimer say: "I am (Name of Candidate) and I approve this message."

### Telephonic and Electronic Communications.

If the communication related to 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 related to a candidate and was not an independent expenditure, but was paid for by a person other than the candidate, the communication would have to clearly state the following disclaimer: "Authorized by\_\_\_\_\_."

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 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.

The bill would take effect January 31, 2009.

MCL 169.247 and 248

## ***BACKGROUND INFORMATION:***

A similar bill, House Bill 6133, was introduced by Rep. Mike Nofs during the last 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.

## ***ARGUMENTS:***

### ***For:***

House Bill 4239 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 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:***

The Michigan Campaign Finance Network (which nevertheless supports the bill) points out that it is important to recognize the limitations of this bill.

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 committee 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 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.

***Response:***

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

***POSITIONS:***

The Michigan Campaign Finance Network supports the bill. (3-6-07)

The Michigan Chamber of Commerce supports the bill. (3-6-07)

The League of Women Voters of Michigan is neutral on the bill. (3-6-07)

Legislative Analyst: J. Hunault  
Fiscal Analyst: Robin Risko  
Marilyn Peterson

---

■ 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.