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BILL ANALYSIS

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Senate Bill 3 (Substitute S-2 as passed by the Senate)  
Senate Bill 284 (Substitute S-2 as passed by the Senate)  
Senate Bill 285 (Substitute S-4 as passed by the Senate)  
Sponsor: Senator Bill Hardiman (S.B. 3)  
          Senator Michelle A. McManus (S.B. 285)  
          Senator Randy Richardville (S.B. 284)  
Committee: Campaign and Election Oversight

Date Completed: 4-18-07

### **RATIONALE**

Along with website and satellite radio ads, automated telephone calls are not subject to the identifying and disclosure statement requirements that apply to printed, television, and radio ads. During the weeks preceding an election, many voters receive automated telephone calls that talk about ballot questions, candidates, political parties, and organizations. Evidently, the number and frequency of automated telephone calls have increased over the last few elections. Often, automated telephone calls (or "robo calls") do not disclose who paid for them, which can lead to confusion among those receiving the calls and make it difficult to hold the sponsors of the calls accountable for false or misrepresented information.

Because automated phone calls, websites, and satellite radio advertisements frequently are used for political campaigns, some people believe that they should be subject to the same disclosure requirements that apply to other advertising media.

### **CONTENT**

**The bills would amend the Michigan Campaign Finance Act to do the following:**

- Define "automated telephonic communication".
- Require certain identifying statements and disclosures in automated telephonic communications and website ads

- that were expenditures or contributions under the Act.
- Apply current identifying statement requirements for ads to those that were expenditures or contributions under the Act; and extend current requirements to satellite radio ads.
- Prescribe a misdemeanor penalty for violations concerning automated telephonic communications.
- Limit an existing penalty to a person responsible for the content of an ad.

The bills are described below.

#### **Senate Bill 3 (S-2)**

The bill would define "automated telephonic communication" as any outbound telephone call that plays a recorded message that expressly advocates for or against an election, a candidate, or a ballot question.

#### **Senate Bill 284 (S-2)**

Under the bill, except for a communication not subject to the Act, an automated telephonic communication with an elector having reference to a candidate or ballot question that was an expenditure or contribution under the Act would have to state clearly the identity of the person paying for the communication and, except for the communication of a candidate committee or ballot committee, indicate that the communication was paid for "with regulated funds". If the communication were an independent expenditure not authorized by a candidate's candidate

committee or a ballot committee, it would have to state: "Not authorized by a candidate committee" or "Not authorized by the ballot committee", as applicable. If the communication were not an independent expenditure, but were paid for by a person other than the candidate or ballot committee to whom or to which it related, the communication would have to state: "Authorized by [name of candidate or name of candidate committee]" or "Authorized by [name of ballot committee]", as applicable.

An individual other than a candidate would not be subject to these requirements if he or she were acting independently and not acting as an agent for a candidate, ballot committee, or any committee.

Only automated telephonic communications or advertisements subject to the Act could bear the "with regulated funds" statement that would be required under the bill. A person who used the statement with respect to automated telephonic communications that were not subject to the Act would violate the Act.

A person who knowingly violated the bill would be guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$1,000. The violator also would be liable for a civil fine of up to \$10,000 or the amount paid for the communication, whichever was greater. Each day that a violation occurred would constitute a separate violation.

(Under the Act, "expenditure" means a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question. "Contribution" means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question.

"Independent expenditure" means an expenditure by a person if the expenditure is not made at the direction, or under the control, of another person and if the expenditure is not a contribution to a committee.)

### **Senate Bill 285 (S-4)**

#### Printed Matter; Radio & TV Ads

Under Section 47 of the Act, a billboard, placard, poster, pamphlet, or other printed matter referring to an election, candidate, or ballot question must bear the name and address of the person paying for the matter. Under the bill, except for printed matter not subject to the Act, a billboard, placard, poster, pamphlet, or other printed matter that was an expenditure or contribution under the Act, would be required to bear the name and address of the person paying for it.

Currently, a radio or television paid ad referring to an election, candidate, or ballot question must identify the sponsoring person as required by the Federal Communications Commission (FCC), and bear the name of the person paying for the ad. Under the bill, except for advertisements not subject to the Act, a radio, satellite radio, or TV paid advertisement that was an expenditure or contribution under the Act, would have to identify the sponsoring person as required by the FCC and bear the name of the person paying for the ad.

As currently required, except for a candidate committee's printed matter or radio or TV paid ad, printed matter or a radio or TV ad subject to these identification requirements also would have to indicate that it was paid for "with regulated funds".

Under Section 47, if a radio or TV ad relates to a candidate and is an independent expenditure, it must contain the following: "Not authorized by any candidate". If the radio or TV ad relates to a candidate and is not an independent expenditure but is paid for by a person other than the candidate, it must state: "Authorized by [name of candidate or name of candidate committee]". The bill would include a satellite radio ad in these requirements.

An individual other than a candidate would not be subject to these requirements if he or she were acting independently and not acting as an agent for a candidate or any committee.

#### Website Ads

Under the bill, except for website advertisements not subject to the Act, a paid ad on a website having reference to a candidate or ballot question and that was an expenditure or contribution under the Act would be required to identify by name the person paying for the ad or, if the person making the ad maintained the website, the person paying for the website. Also, except for a candidate committee's or ballot committee's website ad, the advertisement would have to indicate that it was paid for with "regulated funds".

If the payment were an independent expenditure, the ad would have to contain the following, as applicable: "Not authorized by any candidate." or "Not authorized by any ballot committee." If the payment were not an independent expenditure and were made by a person other than a candidate committee or ballot committee, the ad would be required to contain the following, as applicable: "Authorized by [name of candidate or name of candidate committee]" or "Authorized by [name of ballot committee]".

An individual other than a candidate would not be subject to these requirements if he or she were acting independently and not acting as an agent for a candidate, ballot committee, or any committee.

#### Violations

As currently provided, only printed matter or advertisements subject to the Act could bear the "with regulated funds" statement. A person who used the statement with respect to printed matter or ads that were not subject to the Act would violate the Act.

A person who knowingly violates Section 47 is guilty of a misdemeanor punishable by a maximum fine of \$1,000 and/or up to 93 days' imprisonment. The bill would limit this to a person who was responsible for the content of the printed matter, radio, including satellite radio, or television paid ad.

MCL 169.202 (S.B. 3)  
Proposed MCL 196.248 (S.B. 284)  
MCL 169.247 (S.B. 285)

#### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Automated phone calls, website ads, and satellite radio ads should be subject to the same disclosure requirements as print, radio, and television ads. Because these communications are not subject to disclosure requirements, they have been used to convey misleading and false information about candidates, political parties, and ballot questions. Currently, some sponsors of automated phone calls, website ads, and satellite radio ads make accusations, claim to represent groups they do not, and otherwise advertise in ways that could not be supported under scrutiny. By requiring the same disclaimers for automated phone calls, website ads, and satellite radio ads as are currently required for other advertising media, the bills would hold sponsors accountable for the content of their ads and keep the Michigan Campaign Finance Act in line with changing technology.

**Response:** The disclosures and identifying statements that the bills would require for automated phone calls would be very difficult to enforce. If a call did not contain an identifying statement, it would be difficult for the Secretary of State even to begin an investigation; the department does not have subpoena power and could not compel robo call companies to produce client records.

#### **Opposing Argument**

Senate Bill 284 (S-2) should require identifying statements to be placed at the beginning of an automated phone call. Because a person often will hang up before the call has finished, placing identifying statements at the beginning would ensure that they were heard.

#### **Opposing Argument**

Contact information including an address and phone number for each robo call sponsor also should be available to voters. Political organizations often have similar-sounding names that can be confusing to voters. Requiring the additional contact

information would ensure that the right person would be accountable for a robo call by allowing voters to respond to those who call them.

### **Opposing Argument**

Many citizens and organizations would like to limit or eliminate automated telephone calls referring to candidates and ballot questions. These bills, however, would not change the frequency or volume of telephone calls and would not solve the problem of unsolicited calling. A ban on automated telephonic communications or a do-not-call list is needed to solve the problem and relieve citizens.

Legislative Analyst: Craig Laurie

### **FISCAL IMPACT**

#### **Senate Bill 3 (S-2)**

The bill would have no fiscal impact on State or local government.

#### **Senate Bills 284 (S-2) and 285 (S-4)**

The bills would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of the offense proposed by Senate Bill 284 (S-2) or the offense that Senate Bill 285 (S-4) would amend. To the extent that the bills resulted in increased convictions or incarceration time, local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander  
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.