

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 331 (Senator Simonaire)
Education, Health, and Environmental Affairs

Election Law - Telephone Polling - Campaign Transparency Act

This bill requires a person to ensure that a specified “persuasive poll,” conducted with or without an artificial or prerecorded telephone message, state during or after the message information required under State election law to be contained in the authority line of campaign material. A person that willfully and knowingly violates this requirement is subject to the civil penalty provisions of the Maryland Telephone Consumer Protection Act.

Fiscal Summary

State Effect: Potential increase in general fund revenues and expenditures due to potential enforcement activity and collection of penalties. Any increase cannot be reliably estimated.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Campaign Material

Campaign material published or distributed by a campaign finance entity generally must contain the name and address of the treasurer of each campaign finance entity responsible

for the material as well as the name(s) of the campaign finance entity or entities. Campaign material published or distributed by any other person must contain the name and address of the person responsible for the material. Addresses on file with the State Board of Elections or a local board may be omitted. A specified statement must be included in campaign material published or distributed in support of or opposition to a candidate that is not authorized by the candidate.

Maryland Telephone Consumer Protection Act

Under the Maryland Telephone Consumer Protection Act (Chapter 437 of 2004), a person may not violate the federal Telephone Consumer Protection Act (47 U.S.C. § 227) as implemented by Federal Communications Commission regulations.

FCC regulations prohibit the initiation of any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, except under specified circumstances, including when a call is not made for commercial purposes. All artificial or prerecorded telephone messages must clearly state the identity of the business, individual, or other entity responsible for the call at the beginning of the message. The telephone number of the business, individual, or other entity must also be clearly stated during or after the message and may not be the number of the auto-dialer or prerecorded message player that placed the call or any number for which charges exceed local or long distance transmission charges.

Violations of the Maryland Telephone Consumer Protection Act are considered unfair and deceptive trade practices and are subject to penalties set forth under the Maryland Consumer Protection Act. Under the Act, civil penalties of up to \$1,000 per violation and up to \$5,000 for subsequent violations apply to merchants. Any person can be subject to a criminal fine of up to \$1,000 and/or imprisonment for up to one year.

State Fiscal Effect: Assuming complaints would be handled by the Consumer Protection Division of the Attorney General's Office (which is generally responsible for handling consumer complaints under the Maryland Telephone Consumer Protection Act and the Maryland Consumer Protection Act), general fund expenditures could increase if a significant number of complaints were received. The State Board of Elections received numerous complaints regarding automated campaign calls in general and persuasive polls during the 2006 elections and 2008 primary. The number of complaints the Consumer Protection Division could receive (or have referred from SBE) resulting from this bill in future election years cannot be reliably estimated.

The Attorney General's Office advises two additional positions, a complaint supervisor and an investigator, and associated equipment and operating expenses would be required.

This would result in a general fund expenditure increase of \$120,457 in fiscal 2009 and ongoing personnel and operating expenses in future years.

Legislative Services advises, however, that it is unclear at this time whether that level of additional resources would be needed or whether additional resources would be required at all, as the number of complaints that would be received, and the nature of any investigations, is uncertain. Accordingly, to the extent the Attorney General's Office is unable to handle the additional workload with existing staff, additional staff may be requested through the annual budget process.

General fund revenues could increase to the extent civil penalties are collected.

Additional Information

Prior Introductions: HB 589 of 2007, a similar bill addressing artificial or prerecorded telephone messages relating to a candidate, prospective candidate, or the approval or rejection of a question, was passed by the House and received a hearing in the Senate Education, Health, and Environmental Affairs Committee but no further action was taken.

Cross File: None.

Information Source(s): State Board of Elections, Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

Fiscal Note History: First Reader - February 25, 2008
mll/ljm

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