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Bill Analysis
Legislative Service Commission

H.B. 506
127th General Assembly
(As Introduced)

Rep. Collier

BILL SUMMARY

- Prohibits a person from making a political call without disclosing, at the beginning of the call, specified information regarding the source and funding of that call.
- Prohibits a person from making a political call that uses artificial or prerecorded voice messages to a telephone number that is included in the no-automated political call list.
- Permits the Attorney General to seek a declaratory judgment, temporary restraining order, preliminary or permanent injunction, or civil penalties, or to bring a class action on behalf of list subscribers for violations of these political call prohibitions.
- Requires the Attorney General to establish a no-automated political call list, on which telephone service subscribers may request their telephone numbers to be included.
- Requires the Attorney General to adopt rules regarding the development, operation, and maintenance of the no-automated political call list.
- Prohibits information acquired in relation to the no-automated political call list from being used for other than specified list-related purposes.
- Establishes criminal penalties for anyone who uses information acquired in relation to the no-automated political call list for other than specified list-related purposes.

CONTENT AND OPERATION

Political call prohibitions

Existing law

Existing law, unchanged by the bill, prohibits any candidate, campaign committee, legislative campaign fund, political party, political action committee, limited political action committee, political contributing entity, limited political contributing entity, or other person or entity from conducting a telephone bank¹ for any of the following purposes, unless the call includes a disclaimer that identifies the name of the person or entity paying for the telephone bank (R.C. 3517.20(C)--*not in the bill*):

- (1) Promoting the nomination, election, or defeat of a candidate;
- (2) Promoting the adoption or defeat of an issue;
- (3) Influencing the voters in an election.

Whoever violates this prohibition must be fined not more than \$500 (R.C. 3517.992(U)--*not in the bill*). Complaints regarding such a violation must be filed with the Ohio Elections Commission, and, if the Commission determines that a fine is appropriate, the Commission is responsible for imposing that fine (R.C. 3517.20(D) and 3517.993--*not in the bill*).

Prohibitions proposed by the bill

The bill retains the existing restriction on telephone banks and proposes two additional prohibitions related to political calls.² Under the bill, no person that wholly or partially engages in making political calls directly or through one or more persons either from a location in Ohio or from a location outside of Ohio to persons in Ohio, is permitted to do either of the following (R.C. 4719.251(A)):

¹ A "telephone bank" means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period, whether those telephone calls are made by individual callers or by recording (R.C. 3517.20(A)(1)(I)).

² The bill defines a "political call" as a telephone call made by, on behalf of, or in connection with a candidate, campaign committee, political party, political action committee, political contributing entity, legislative campaign fund, ballot issue, or other political purpose, including any related survey (R.C. 4719.25).

- Make or cause to be made a political call without disclosing, at the beginning of the call, (1) the name of the entity that ultimately requested that the call be made or, otherwise, the name of the caller, and (2) if the call is a service for which payment is rendered, the name of the entity paying for that service.
- Initiate or cause to be initiated to a telephone number, more than 30 days after the number appears on the no-automated political call list that is established by the bill, any political call that uses artificial or prerecorded voice messages.

If the political call is part of a telephone bank, as defined in the Campaign Finance Law, the political call must include the disclaimer required under that law identifying the person or entity paying for the telephone bank. The telephone bank disclaimer must be included with the other information required to be disclosed at the beginning of the political call. (R.C. 4719.251(B).)

If, by the Attorney General's own inquiry or as a result of complaints, the Attorney General has reasonable cause to believe that a person has been or is engaged in an act or practice that violates either of these prohibitions, the Attorney General, within two years after the violation occurs, may either (1) bring an action to obtain a declaratory judgment, temporary restraining order, or preliminary or permanent injunction or (2) bring a class action on behalf of subscribers for damaged caused by the violation. It is an affirmative defense to any action brought for a violation of these prohibitions that the defendant established and implemented, with due care, reasonable practices and procedures to prevent the alleged violation. (R.C. 4719.255(A) and (B) and 4719.256.)

If the Attorney General brings an action for a declaratory judgment, temporary restraining order, or preliminary or permanent injunction, and the Attorney General shows by a preponderance of the evidence that the person has violated or is violating either of these prohibitions, the court is permitted to issue a temporary restraining order or preliminary or permanent injunction without bond. On motion of the Attorney General, or its own motion, the court may impose a civil penalty of not more than \$5,000 for each day of violation of any such order or injunction. (R.C. 4719.255(A)(1).)

On the Attorney General's motion, and without bond, the court is permitted to make appropriate orders, including the appointment of a referee or receiver, for sequestration of assets, to reimburse subscribers found to have been injured, or to grant other appropriate relief. The court may assess the expenses of a referee or receiver against the violator. In addition to these other remedies, the Attorney General may request, and the court may impose, a civil penalty of not more than \$2,000 for each violation. The court may increase the amount of any award by up

to three times, if the court holds that the defendant purposely or knowingly violated any of the prohibitions. (R.C. 4719.255(C) and (D) and 4719.256.) These powers, remedies, and penalties are in addition to any other power, remedy, or penalty provided by law (R.C. 4719.257).

If the court imposes civil penalties for a violation of the prohibition or a violation of a restraining order or injunction, one-fourth of the penalty amount must be paid to the treasurer of the county in which the action is brought and three-fourths of the penalty amount must be paid into the Political Calling Enforcement Fund. The bill establishes the Political Calling Enforcement Fund in the State Treasury and requires the fund to be used to pay the costs of the office of the Attorney General in enforcing these provisions. (R.C. 4719.255(E).) If the Attorney General recovers any property by bringing a class action on behalf of subscribers for damages caused by the violation, and if that property cannot with due diligence within five years be restored to subscribers of the list, the property must become unclaimed funds subject to the Unclaimed Funds Law (R.C. 4719.255(C)).

No-automated political call list

Establishment of the list

The bill requires the Attorney General to provide for the development, operation, and maintenance of a secured electronic database constituting the "no-automated political call list." The list must be updated not less than quarterly and must consist only of telephone numbers of those telephone service subscribers that have requested inclusion on the list. The list also must be made available in printed form. The Attorney General may contract with any entity for the development, operation, and maintenance of the list. Any such contract must be awarded to the lowest responsive and responsible bidder and must require timely remittance to the Attorney General of any distribution fee collected.

Under the bill, the Attorney General is required to adopt rules to carry out the establishment and maintenance of the no-automated political call list. The rules must prescribe a procedure for telephone service subscribers to request inclusion on the list and must specify a reasonable amount to be paid by a person as a distribution fee to obtain a copy of or access to the list. The list must be made available to any person upon request pursuant to the procedures prescribed by those rules, which procedures must include payment of the distribution fee.

All fees required to be paid under those rules must be paid or remitted to the Attorney General and deposited to the credit of the No-automated Political Call List Fund. The bill creates that fund in the State Treasury and requires monies in the fund to be used for the purpose of paying the costs of developing,

operating, and maintaining the list, including any costs arising under a contract for the development, operation, and maintenance of the list. (R.C. 4719.252.)

Access to information regarding the list

The bill specifies that the no-automated political call list or any information received or maintained by the Attorney General or any contractor in connection with a telephone number or subscriber for the purpose of developing, operating, or maintaining the list is not a public record for the purpose of the Public Records Law (R.C. 4719.253(A)). A person is prohibited from disclosing or using such information for any purpose other than the following (R.C. 4719.253(B)):

- Developing, operating, or maintaining the list;
- Enforcing the prohibition against making automated political calls to numbers included on the list;
- Pursuing an action related to a violation of the prohibition against making automated political calls to numbers included on the list;
- Complying with a lawful court order or subpoena directing disclosure of the list or other information, as necessary.

The bill specifies that anyone who violates this prohibition is guilty of a misdemeanor of the fourth degree on a first offense and a felony of the fifth degree on each subsequent offense (R.C. 4719.99(B)).

Notice of the list in telephone directories

Under the bill, any company that provides a local telephone directory to a telephone service subscriber in Ohio must include in the directory a notice (1) describing the no-automated political call list and (2) providing complete information on procedures the subscriber should follow to have the subscriber's telephone number included on the list (R.C. 4719.254).

COMMENT

Because the bill regulates political speech, if enacted it may be subject to challenge on freedom of speech grounds (the First Amendment to the United States Constitution). The United States Supreme Court has stated that, "[w]hen a state seeks to restrict directly the offer of ideas by a candidate to the voters, the First Amendment surely requires that the restriction be demonstrably supported by not only a legitimate state interest, but a compelling one, and that the restriction operate without unnecessarily circumscribing protected expression." *Brown v.*

Hartlage (1982), 456 U.S. 45, 53-54. Thus, if the bill is enacted and then subject to judicial challenge, it appears that the court will need to determine that any restrictions on political speech established by the bill are narrowly tailored to serve a compelling governmental interest, in order for those restrictions to be upheld.

HISTORY

ACTION	DATE
Introduced	03-13-08

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