

“Robo Calls” illegal in Montana, but enforcement is difficult

Automated calls are illegal in Montana. The statute is MCA 45-8-216 (see below). The statute is not specific to political campaigning and is not under the jurisdiction of the Commissioner of Political Practices, however.

It's contained in the criminal code under "Offenses Against Public Order" and the Commissioner has no authority in that area. Criminal complaints are handled by local law enforcement, and that's where to take a complaint.

In the past, local law enforcement has been reluctant to investigate or prosecute the complaints because of the difficulty in prosecuting this type of statute. (Often, the calls come from outside Montana. In the case of political campaigning, the callers may raise issues of First Amendment Free Speech as well, potentially making prosecution difficult and expensive.)

45-8-216. Unlawful automated telephone solicitation -- exceptions -- penalties. (1)

A person may not use an automated telephone system, device, or facsimile machine for the selection and dialing of telephone numbers and playing of recorded messages if a message is completed to the dialed number for the purpose of:

- (a) offering goods or services for sale;
- (b) conveying information on goods or services in soliciting sales or purchases;
- (c) soliciting information;
- (d) gathering data or statistics; or
- (e) promoting a political campaign or any use related to a political campaign.

(2) This section does not prohibit the use of an automated telephone system, device, or facsimile machine described under subsection (1) for purposes of informing purchasers of the receipt, availability for delivery, delay in delivery, or other pertinent information on the status of any purchased goods or services, of responding to an inquiry initiated by any person, or of providing any other pertinent information when there is a preexisting business relationship. This section does not prohibit the use of an automated telephone system or device if the permission of the called party is obtained by a live operator before the recorded message is delivered.

(3) A person violating subsection (1) is subject to a fine of not more than \$2,500.

The Federal Election Commission has jurisdiction over federal races, such as congressional races.

<http://www.fec.gov/>

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