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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/13/07

SPONSOR Wirth LAST UPDATED \_\_\_\_\_ HB 700

SHORT TITLE Phone Directory and Unsolicited Mail Delivery SB \_\_\_\_\_

ANALYST Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 700 prohibits a for-profit business from distributing a local telephone directory or unsolicited mailing to a resident who notifies the business that the resident no longer wishes to receive the directory or mailing. The Act requires a for-profit business that publishes and delivers local telephone directories or unsolicited mailings to residents to conspicuously print on the directory or mailing a toll-free number and a mailing address that residents may use to provide verbal or written notice to the business that the resident no longer wishes to receive the directory or mailing. The Act provides that the attorney general (AG) or appropriate district attorney (DA) may institute a civil action in district court against a violator or to prevent a violation of the Act. Under the Act, a civil penalty of \$500 may be assessed for each violation. The Act further provides that in any action brought by the AG or a DA, distribution in error shall be a defense.

## SIGNIFICANT ISSUES

HB 700 regulates for-profit businesses that publish and deliver unsolicited local telephone directories and mail to any resident. HB 700 defines a "resident" as any person or entity that has a mailing address in this state.

HB 700 A(1) requires for-profit businesses that publish and deliver unsolicited directories and mailings to conspicuously print the following statement:

"IF YOU NO LONGER WISH TO RECEIVE THIS MAILING, PLEASE CALL THE FOLLOWING NUMBER OR WRITE TO THE FOLLOWING ADDRESS:"

Section A(2) requires the disclosure of information. The information required is for the businesses to provide a toll-free number and a mailing address for the business that residents may use to provide verbal or written notice to the business that the resident no longer wishes to receive the directory or mailing.

Section B prohibits distribution upon resident's verbal or written notification of wish to no longer receive the directory or mailing. HB 700 appears to allow unsolicited local telephone directories and unsolicited mailing until the for-profit business receives notice from a resident that the resident no longer wishes to continue to receive the unsolicited directory or mail or both.

A for-profit business violates this act if the resident notifies the business that the resident no longer wishes to receive the directory or mailing and the business non-erroneously delivers the unsolicited directory or mailing to a resident.

Section C contains the enforcement and penalty provision. Section C permits the attorney general or appropriate district attorney to institute a civil action in district court. A \$500.00 per violation penalty may be assessed.

Section D contains an affirmative defense for the erroneous distribution of unsolicited telephone directory or mailing to a resident. HB 700 D may require proof of some type of intent to distribute or perhaps some type of knowledge.

Section E defines: "delivery;" "local telephone directory;" "resident;" and "unsolicited mailing." **Unsolicited mailing** is defined to mean a communication delivered to a resident without the resident's prior express invitation or permission. The term "communication" may be over broad and is not defined or limited.

U.S. constitution may also limit HB 700. See commercial speech e.g. the government can ban deceptive or illegal commercial speech; any other regulation must be supported by a substantial interest to be achieved by restrictions, regulations in proportion to that interest, and a limitation on expression designed carefully to achieve the state's goal.

## ADMINISTRATIVE IMPLICATIONS

HB 700 permits the Attorney General to investigate and prosecute all violations of this act, which may result in staff time dedicated to additional prosecutions a year.

## TECHNICAL ISSUES

HB 700 “person,” “entity” and “communication” may need further definition.

EO/mt