
SENATE BILL No. 290

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-9; IC 3-14-1.

Synopsis: Disclosure of persuasion polls. Defines a "persuasion poll" as a telephone survey that: (1) includes more than 500 calls; (2) references a candidate in any election or caucus; and (3) is designed to provide negative information about a candidate or to influence the respondent to vote for or against a candidate. Prohibits a person from sponsoring, authorizing, conducting, or administering a persuasion poll unless the caller identifies at the end of the call the person sponsoring and authorizing the call. Requires that if a candidate's committee neither sponsors nor authorizes a call, the caller must state that the call is not authorized by any candidate or candidate's committee. Makes a violation of these provisions a Class B misdemeanor. Provides that a candidate, candidate's committee, regular party committee, political action committee, or legislative caucus committee that sponsors a persuasion poll that violates these provisions is subject to a civil penalty of up to three times the amount expended in sponsoring the poll. Provides that a person who authorizes, conducts, or administers a persuasion poll that violates these provisions must pay a civil penalty of \$50 for each offending call, up to a maximum civil penalty of \$1,000 for each poll conducted, plus any investigative costs incurred.

Effective: July 1, 2000.

Skillman

January 10, 2000, read first time and referred to Committee on Elections.

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Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

SENATE BILL No. 290



A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 3-9-4-16 IS AMENDED TO READ AS FOLLOWS
- 2 [EFFECTIVE JULY 1, 2000]: Sec. 16. (a) In addition to any other
- 3 penalty imposed, a person who does any of the following is subject to
- 4 a civil penalty under this section:
- 5 (1) Fails to file with the election division a report in the manner
- 6 required under IC 3-9-5.
- 7 (2) Fails to file a statement of organization required under
- 8 IC 3-9-1.
- 9 (3) Is a committee or a member of a committee who disburses or
- 10 expends money or other property for any political purpose before
- 11 the money or other property has passed through the hands of the
- 12 treasurer of the committee.
- 13 (4) Makes a contribution other than to a committee subject to this
- 14 article or to a person authorized by law or a committee to receive
- 15 contributions on the committee's behalf.
- 16 (5) Is a corporation or labor organization that exceeds any of the
- 17 limitations on contributions prescribed by IC 3-9-2-4.



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- 1 (6) Makes a contribution in the name of another person.
 2 (7) Accepts a contribution made by one (1) person in the name of
 3 another person.
 4 (8) Is not the treasurer of a committee subject to this article, and
 5 pays any expenses of an election or a caucus except as authorized
 6 by this article.
 7 (9) Commingles the funds of a committee with the personal funds
 8 of an officer, a member, or an associate of the committee.
 9 (10) Wrongfully uses campaign contributions in violation of
 10 IC 3-9-3-4.
 11 (11) Violates IC 3-9-2-12.
 12 **(12) Is a candidate, candidate's committee, regular party**
 13 **committee, political action committee, or legislative caucus**
 14 **committee that sponsors a persuasion poll that does not**
 15 **comply with IC 3-9-8-4, IC 3-9-8-5, or IC 3-9-8-6.**
 16 **(13) Authorizes, conducts, or administers a persuasion poll**
 17 **that does not comply with IC 3-9-8-4, IC 3-9-8-5, or**
 18 **IC 3-9-8-6.**
- 19 (b) This subsection applies to a person who is subject to a civil
 20 penalty under subsection (a)(1) or (a)(2) for filing a defective report or
 21 statement. If the commission determines that a person failed to file the
 22 amended report or statement of organization not later than noon five (5)
 23 days after being given notice under section 14 of this chapter, the
 24 commission may assess a civil penalty. The penalty is ten dollars (\$10)
 25 for each day the report is late after the expiration of the five (5) day
 26 period, not to exceed one hundred dollars (\$100) plus any investigative
 27 costs incurred and documented by the election division. The civil
 28 penalty limit under this subsection applies to each report separately.
- 29 (c) This subsection applies to a person who is subject to a civil
 30 penalty under subsection (a)(1) or (a)(2) for a delinquent report or
 31 statement. If the commission determines that a person failed to file the
 32 report or statement of organization by the deadline prescribed under
 33 this article, the commission shall assess a civil penalty. The penalty is
 34 fifty dollars (\$50) for each day the report or statement is late, with the
 35 afternoon of the final date for filing the report or statement being
 36 calculated as the first day. The civil penalty under this subsection may
 37 not exceed one thousand dollars (\$1,000) plus any investigative costs
 38 incurred and documented by the election division. The civil penalty
 39 limit under this subsection applies to each report separately.
- 40 (d) This subsection applies to a person who is subject to a civil
 41 penalty under subsection (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), or
 42 (a)(10). If the commission determines that a person is subject to a civil

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1 penalty under subsection (a), the commission may assess a civil penalty
 2 of not more than one thousand dollars (\$1,000), plus any investigative
 3 costs incurred and documented by the election division.

4 (e) This subsection applies to a person who is subject to a civil
 5 penalty under subsection (a)(5). If the commission determines that a
 6 person is subject to a civil penalty under subsection (a)(5), the
 7 commission may assess a civil penalty of not more than three (3) times
 8 the amount of the contribution in excess of the limit prescribed by
 9 IC 3-9-2-4, plus any investigative costs incurred and documented by
 10 the election division.

11 (f) This subsection applies to a person who is subject to a civil
 12 penalty under subsection (a)(11). If the commission determines that a
 13 candidate or the candidate's committee has violated IC 3-9-2-12, the
 14 commission shall assess a civil penalty equal to the greater of the
 15 following, plus any investigative costs incurred and documented by the
 16 election division:

- 17 (1) Two (2) times the amount of any contributions received.
- 18 (2) One thousand dollars (\$1,000).

19 **(g) This subsection applies to a candidate, candidate's**
 20 **committee, regular party committee, political action committee, or**
 21 **legislative caucus committee that is subject to a civil penalty under**
 22 **subsection (a)(12). If the commission determines that the**
 23 **candidate, candidate's committee, regular party committee,**
 24 **political action committee, or legislative caucus committee has**
 25 **sponsored a persuasion poll that included calls that did not comply**
 26 **with IC 3-9-8-4, IC 3-9-8-5, or IC 3-9-8-6, the commission may**
 27 **assess a civil penalty of up to three (3) times the amount expended**
 28 **by the candidate, candidate's committee, regular party committee,**
 29 **political action committee, or legislative caucus committee in**
 30 **sponsoring the poll, plus any investigative costs incurred and**
 31 **documented by the election division. If the commission determines**
 32 **that a civil penalty is warranted, the commission shall consider the**
 33 **following factors in determining the amount of the penalty:**

- 34 (1) the number of calls made in violation of IC 3-9-8-4,
 35 IC 3-9-8-5, or IC 3-9-8-6; and
- 36 (2) whether the calls in violation of IC 3-9-8-4, IC 3-9-8-5, or
 37 IC 3-9-8-6 were isolated events or part of a pattern of
 38 violations.

39 (h) This subsection applies to a person who is subject to a civil
 40 penalty under subsection (a)(13). If the commission determines that
 41 a person has violated IC 3-9-8-4, IC 3-9-8-5, or IC 3-9-8-6, the
 42 commission shall assess a civil penalty. The penalty is fifty dollars



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1 **(\$50) for each call that violates IC 3-9-8-4, IC 3-9-8-5, or**
 2 **IC 3-9-8-6. The civil penalty under this subsection may not exceed**
 3 **one thousand dollars (\$1,000) for each poll conducted, plus any**
 4 **investigative costs incurred and documented by the election**
 5 **division.**

6 (i) All civil penalties collected under this section shall be deposited
 7 with the treasurer of state in the campaign finance enforcement
 8 account.

9 ~~(h)~~ (j) Proceedings of the commission under this section are subject
 10 to IC 4-21.5.

11 SECTION 2. IC 3-9-4-17 IS AMENDED TO READ AS FOLLOWS
 12 [EFFECTIVE JULY 1, 2000]: Sec. 17. (a) In addition to any other
 13 penalty imposed, a person who does any of the following is subject to
 14 a civil penalty under this section:

15 (1) Fails to file with a county election board a report in the
 16 manner required under IC 3-9-5.

17 (2) Fails to file a statement of organization required under
 18 IC 3-9-1.

19 (3) Is a committee or a member of a committee who disburses or
 20 expends money or other property for any political purpose before
 21 the money or other property has passed through the hands of the
 22 treasurer of the committee.

23 (4) Makes a contribution other than to a committee subject to this
 24 article or to a person authorized by law or a committee to receive
 25 contributions in the committee's behalf.

26 (5) Is a corporation or labor organization that exceeds any of the
 27 limitations on contributions prescribed by IC 3-9-2-4.

28 (6) Makes a contribution in the name of another person.

29 (7) Accepts a contribution made by one (1) person in the name of
 30 another person.

31 (8) Is not the treasurer of a committee subject to this article, and
 32 pays any expenses of an election or a caucus except as authorized
 33 by this article.

34 (9) Commingles the funds of a committee with the personal funds
 35 of an officer, a member, or an associate of the committee.

36 (10) Wrongfully uses campaign contributions in violation of
 37 IC 3-9-3-4.

38 **(11) Is a candidate, candidate's committee, regular party**
 39 **committee, or political action committee that sponsors a**
 40 **persuasion poll that does not comply with IC 3-9-8-4,**
 41 **IC 3-9-8-5, or IC 3-9-8-6.**

42 **(12) Authorizes, conducts, or administers a persuasion poll**

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1 **that does not comply with IC 3-9-8-4, IC 3-9-8-5, or**
 2 **IC 3-9-8-6.**

3 (b) This subsection applies to a person who is subject to a civil
 4 penalty under subsection (a)(1) or (a)(2) for filing a defective report or
 5 statement. If the county election board determines that a person failed
 6 to file the report or a statement of organization not later than noon five
 7 (5) days after being given notice under section 14 of this chapter, the
 8 county election board may assess a civil penalty. The penalty is ten
 9 dollars (\$10) for each day the report is late after the expiration of the
 10 five (5) day period, not to exceed one hundred dollars (\$100) plus any
 11 investigative costs incurred and documented by the board. The civil
 12 penalty limit under this subsection applies to each report separately.

13 (c) This subsection applies to a person who is subject to a civil
 14 penalty under subsection (a)(1) or (a)(2) for a delinquent report or
 15 statement. If the county election board determines that a person failed
 16 to file the report or statement of organization by the deadline prescribed
 17 under this article, the board shall assess a civil penalty. The penalty is
 18 fifty dollars (\$50) for each day the report is late, with the afternoon of
 19 the final date for filing the report or statement being calculated as the
 20 first day. The civil penalty under this subsection may not exceed one
 21 thousand dollars (\$1,000) plus any investigative costs incurred and
 22 documented by the board. The civil penalty limit under this subsection
 23 applies to each report separately.

24 (d) This subsection applies to a person who is subject to a civil
 25 penalty under subsection (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), or
 26 (a)(10). If the county election board determines that a person is subject
 27 to a civil penalty under subsection (a), the board may assess a civil
 28 penalty of not more than one thousand dollars (\$1,000), plus any
 29 investigative costs incurred and documented by the board.

30 (e) This subsection applies to a person who is subject to a civil
 31 penalty under subsection (a)(5). If the county election board determines
 32 that a person is subject to a civil penalty under subsection (a)(5), the
 33 board may assess a civil penalty of not more than three (3) times the
 34 amount of the contribution in excess of the limit prescribed by
 35 IC 3-9-2-4, plus any investigative costs incurred and documented by
 36 the board.

37 **(f) This subsection applies to a candidate, candidate's**
 38 **committee, regular party committee, or political action committee**
 39 **that is subject to a civil penalty under subsection (a)(11). If the**
 40 **county election board determines by a unanimous vote that the**
 41 **candidate, candidate's committee, regular party committee, or**
 42 **political action committee has sponsored a persuasion poll that**

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1 included calls that did not comply with IC 3-9-8-4, IC 3-9-8-5, or
 2 IC 3-9-8-6, the county election board may assess a civil penalty of
 3 up to three (3) times the amount expended by the candidate,
 4 candidate's committee, regular party committee, or political action
 5 committee in sponsoring the poll, plus any investigative costs
 6 incurred and documented by the county election board. If the
 7 county election board determines by a unanimous vote that a civil
 8 penalty is warranted, the county election board shall consider the
 9 following factors in determining the amount of the penalty:

10 (1) the number of calls made in violation of IC 3-9-8-4,
 11 IC 3-9-8-5, or IC 3-9-8-6; and

12 (2) whether the calls in violation of IC 3-9-8-4, IC 3-9-8-5, or
 13 IC 3-9-8-6 were isolated events or part of a pattern of
 14 violations.

15 (g) This subsection applies to a person who is subject to a civil
 16 penalty under subsection (a)(12). If the county election board
 17 determines that a person has violated IC 3-9-8-4, IC 3-9-8-5, or
 18 IC 3-9-8-6, the county election board shall assess a civil penalty.
 19 The penalty is fifty dollars (\$50) for each call that violates
 20 IC 3-9-8-4, IC 3-9-8-5, or IC 3-9-8-6. The civil penalty under this
 21 subsection may not exceed one thousand dollars (\$1,000) for each
 22 poll conducted, plus any investigative costs incurred and
 23 documented by the board.

24 (h) All civil penalties collected under this section shall be deposited
 25 with the county treasurer to be deposited by the county treasurer in a
 26 separate account to be known as the campaign finance enforcement
 27 account. The funds in the account are available, with the approval of
 28 the county fiscal body, to augment and supplement the funds
 29 appropriated for the administration of this article.

30 (g)(i) Money in the campaign finance enforcement account does not
 31 revert to the county general fund at the end of a county fiscal year.

32 (h)(j) Proceedings of the county election board under this section
 33 are subject to IC 4-21.5.

34 SECTION 3. IC 3-9-8 IS ADDED TO THE INDIANA CODE AS
 35 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 36 1, 2000]:

37 **Chapter 8. Persuasion Polls**

38 **Sec. 1.** As used in this chapter, "basic preference question"
 39 means a question that provides a respondent with a list of
 40 candidates' names and asks which candidate the respondent
 41 supports in a particular election or caucus.

42 **Sec. 2.** As used in this chapter, "persuasion poll" means a

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1 telephone survey or series of telephone surveys that are similar in
2 nature and:

- 3 (1) that include or total more than five hundred (500) calls;
4 (2) that reference, other than in a basic preference question,
5 a candidate or group of candidates in any election or caucus;
6 (3) that is designed to:

7 (A) provide information that is negative or derogatory
8 about a candidate or group of candidates in any election or
9 caucus; or

10 (B) influence the respondent to vote for or against a
11 candidate or group of candidates in any election or caucus;
12 rather than to measure the public's opinion about the
13 candidates or issues in any election or caucus; and

14 (4) to which at least one (1) of the following applies:

15 (A) A list or directory is used, exclusively or in part, to
16 select respondents belonging to a particular subset or
17 combination of subsets of the population based on
18 demographic or political characteristics such as race, sex,
19 age, ethnicity, party affiliation, or similar characteristics.

20 (B) The poll takes less than three (3) minutes to complete,
21 excluding time spent in identifying the person sponsoring
22 and authorizing the poll.

23 (C) The poll does not ask questions about the political or
24 demographic characteristics of the respondents.

25 (D) The person who authorizes, sponsors, conducts, or
26 administers the poll does not collect or tabulate the results
27 of the poll.

28 (E) The poll is commenced not more than ten (10) days
29 before an election.

30 Sec. 3. (a) For purposes of this chapter, a candidate, candidate's
31 committee, regular party committee, political action committee, or
32 legislative caucus committee conducts business in Indiana if the
33 candidate, candidate's committee, regular party committee,
34 political action committee, or legislative caucus committee
35 sponsors or authorizes a persuasion poll that includes telephone
36 calls that are made from:

- 37 (1) Indiana to other locations in Indiana;
38 (2) another state or nation to locations in Indiana; or
39 (3) locations both within and outside Indiana to locations in
40 Indiana.

41 (b) For purposes of this chapter, a person conducts business in
42 Indiana if the person receives money or other remuneration to

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1 conduct or administer a persuasion poll that includes telephone
2 calls that are made from:

- 3 (1) Indiana to other locations in Indiana;
4 (2) another state or nation to locations in Indiana; or
5 (3) locations both within and outside Indiana to locations in
6 Indiana.

7 (c) A nonresident of Indiana who conducts business under
8 subsection (a) or (b) is considered to have appointed the election
9 division as the nonresident's agent for service of process in any
10 action or proceeding against the nonresident arising from the
11 conduct of the persuasion poll.

12 Sec. 4. (a) A person may not sponsor, authorize, conduct, or
13 administer a persuasion poll unless, at the end of the call, the caller
14 identifies the person sponsoring and authorizing the call by stating:
15 "Paid for by (name of person sponsoring the call), on behalf of
16 (name of person authorizing the call)."

17 (b) If the person sponsoring or authorizing the call is not
18 required to file a report under IC 3-9-5, the caller shall also
19 disclose a valid current address for the person identified.

20 (c) If the person sponsoring or authorizing the call is a
21 candidate or candidate's committee, the caller shall also disclose
22 the candidate's name and the office sought by the candidate.
23 However, if a candidate or candidate's committee neither sponsors
24 nor authorizes the call, the caller shall state that the call is not
25 authorized by any candidate or candidate's committee.

26 (d) A person does not violate this section if the respondent
27 voluntarily terminates the call or asks to be called back before the
28 required disclosures are made.

29 Sec. 5. A person may not state or imply false or fictitious names
30 or addresses when making the disclosures required under section
31 4 of this chapter.

32 Sec. 6. (a) A caller who makes the disclosures required under
33 section 4 of this chapter shall do so in a clear and intelligible
34 manner and shall repeat them upon the request of the respondent.

35 (b) A person may make the required disclosures by means of a
36 computerized or prerecorded disclaimer message. However, a
37 computerized or prerecorded disclaimer message must offer
38 respondents an option to repeat the message.

39 Sec. 7. A person who sponsors, authorizes, conducts, or
40 administers a persuasion poll may not knowingly or intentionally
41 block or attempt to block the display of the person's:

- 42 (1) telephone number; or

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1 **(2) identity;**
 2 **by a respondent's caller ID service (as defined by IC 8-1-2.9-1)**
 3 **during a call that is part of the persuasion poll.**
 4 SECTION 4. IC 3-14-1-17 IS ADDED TO THE INDIANA CODE
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 2000]: **Sec. 17. A person who sponsors, authorizes, conducts, or**
 7 **administers a persuasion poll that violates IC 3-9-8-4, IC 3-9-8-5,**
 8 **or IC 3-9-8-6 commits a Class B misdemeanor.**
 9 SECTION 5. IC 3-14-1-18 IS ADDED TO THE INDIANA CODE
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 11 1, 2000]: **Sec. 18. A person who violates IC 3-9-8-7 by knowingly or**
 12 **intentionally blocking or attempting to block the person's**
 13 **telephone number or identity by a respondent's caller ID service**
 14 **(as defined in IC 8-1-2.9-1) commits a Class B misdemeanor.**
 15 **However, the offense is a Class A misdemeanor if the person has a**
 16 **previous unrelated conviction under IC 3-9-8-7.**

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