

# SENATE BILL No. 480

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 3-9; IC 3-14-1-17.

**Synopsis:** Disclosure of persuasion polls. Prohibits a person from conducting a persuasion poll or a political telephone solicitation unless the person identifies at the end of the call the persons sponsoring and authorizing the call. Requires that if a person sponsoring or authorizing a call is a candidate's committee, the caller must also identify the candidate's name and the office sought by the candidate. 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. Provides that a person who fails to make the required disclosures, or who makes false or fictitious disclosures, commits a Class B misdemeanor and must pay civil penalties to the Indiana election commission and a county election board.

**Effective:** July 1, 1999.

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**Skillman**

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January 13, 1999, read first time and referred to Committee on Elections.

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First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

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## SENATE BILL No. 480



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, 1999]: 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.



- 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) Violates IC 3-9-8-4.**  
 13 (b) This subsection applies to a person who is subject to a civil  
 14 penalty under subsection (a)(1) or (a)(2) for filing a defective report or  
 15 statement. If the commission determines that a person failed to file the  
 16 amended report or statement of organization not later than noon five (5)  
 17 days after being given notice under section 14 of this chapter, the  
 18 commission may assess a civil penalty. The penalty is ten dollars (\$10)  
 19 for each day the report is late after the expiration of the five (5) day  
 20 period, not to exceed one hundred dollars (\$100) plus any investigative  
 21 costs incurred and documented by the election division. The civil  
 22 penalty limit under this subsection applies to each report separately.  
 23 (c) This subsection applies to a person who is subject to a civil  
 24 penalty under subsection (a)(1) or (a)(2) for a delinquent report or  
 25 statement. If the commission determines that a person failed to file the  
 26 report or statement of organization by the deadline prescribed under  
 27 this article, the commission shall assess a civil penalty. The penalty is  
 28 fifty dollars (\$50) for each day the report or statement is late, with the  
 29 afternoon of the final date for filing the report or statement being  
 30 calculated as the first day. The civil penalty under this subsection may  
 31 not exceed one thousand dollars (\$1,000) plus any investigative costs  
 32 incurred and documented by the election division. The civil penalty  
 33 limit under this subsection applies to each report separately.  
 34 (d) This subsection applies to a person who is subject to a civil  
 35 penalty under subsection (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), or  
 36 (a)(10). If the commission determines that a person is subject to a civil  
 37 penalty under subsection (a), the commission may assess a civil penalty  
 38 of not more than one thousand dollars (\$1,000), plus any investigative  
 39 costs incurred and documented by the election division.  
 40 (e) This subsection applies to a person who is subject to a civil  
 41 penalty under subsection (a)(5). If the commission determines that a  
 42 person is subject to a civil penalty under subsection (a)(5), the

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1 commission may assess a civil penalty of not more than three (3) times  
 2 the amount of the contribution in excess of the limit prescribed by  
 3 IC 3-9-2-4, plus any investigative costs incurred and documented by  
 4 the election division.

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

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

13 **(g) This subsection applies to a person who is subject to a civil**  
 14 **penalty under subsection (a)(12). If the commission determines that**  
 15 **a person has violated IC 3-9-8-4 by failing to make the required**  
 16 **disclosures or by making false or fictitious disclosures, the**  
 17 **commission shall assess a civil penalty. The penalty is fifty dollars**  
 18 **(\$50) for each call that violates IC 3-9-8-4. The civil penalty under**  
 19 **this subsection may not exceed one thousand dollars (\$1,000) plus**  
 20 **any investigative costs incurred and documented by the election**  
 21 **division.**

22 ~~(g)~~ (h) All civil penalties collected under this section shall be  
 23 deposited with the treasurer of state in the campaign finance  
 24 enforcement account.

25 ~~(h)~~ (i) Proceedings of the commission under this section are subject  
 26 to IC 4-21.5.

27 SECTION 2. IC 3-9-4-17 IS AMENDED TO READ AS FOLLOWS  
 28 [EFFECTIVE JULY 1, 1999]: Sec. 17. (a) In addition to any other  
 29 penalty imposed, a person who does any of the following is subject to  
 30 a civil penalty under this section:

- 31 (1) Fails to file with a county election board a report in the  
 32 manner required under IC 3-9-5.
- 33 (2) Fails to file a statement of organization required under  
 34 IC 3-9-1.
- 35 (3) Is a committee or a member of a committee who disburses or  
 36 expends money or other property for any political purpose before  
 37 the money or other property has passed through the hands of the  
 38 treasurer of the committee.
- 39 (4) Makes a contribution other than to a committee subject to this  
 40 article or to a person authorized by law or a committee to receive  
 41 contributions in the committee's behalf.
- 42 (5) Is a corporation or labor organization that exceeds any of the



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1 limitations on contributions prescribed by IC 3-9-2-4.

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

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

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

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

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

12 **(11) Violates IC 3-9-8-4.**

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

23 (c) This subsection applies to a person who is subject to a civil  
24 penalty under subsection (a)(1) or (a)(2) for a delinquent report or  
25 statement. If the county election board determines that a person failed  
26 to file the report or statement of organization by the deadline prescribed  
27 under this article, the board shall assess a civil penalty. The penalty is  
28 fifty dollars (\$50) for each day the report is late, with the afternoon of  
29 the final date for filing the report or statement being calculated as the  
30 first day. The civil penalty under this subsection may not exceed one  
31 thousand dollars (\$1,000) plus any investigative costs incurred and  
32 documented by the board. The civil penalty limit under this subsection  
33 applies to each report separately.

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

40 (e) This subsection applies to a person who is subject to a civil  
41 penalty under subsection (a)(5). If the county election board determines  
42 that a person is subject to a civil penalty under subsection (a)(5), the

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1 board may assess a civil penalty of not more than three (3) times the  
 2 amount of the contribution in excess of the limit prescribed by  
 3 IC 3-9-2-4, plus any investigative costs incurred and documented by  
 4 the board.

5 **(f) This subsection applies to a person who is subject to a civil**  
 6 **penalty under subsection (a)(11). If the county election board**  
 7 **determines that a person has violated IC 3-9-8-4 by failing to make**  
 8 **the required disclosures or by making false or fictitious disclosures,**  
 9 **the county election board shall assess a civil penalty. The penalty**  
 10 **is fifty dollars (\$50) for each call that violates IC 3-9-8-4. The civil**  
 11 **penalty under this subsection may not exceed one thousand dollars**  
 12 **(\$1,000) plus any investigative costs incurred and documented by**  
 13 **the board.**

14 ~~(f)~~ **(g)** All civil penalties collected under this section shall be  
 15 deposited with the county treasurer to be deposited by the county  
 16 treasurer in a separate account to be known as the campaign finance  
 17 enforcement account. The funds in the account are available, with the  
 18 approval of the county fiscal body, to augment and supplement the  
 19 funds appropriated for the administration of this article.

20 ~~(g)~~ **(h)** Money in the campaign finance enforcement account does  
 21 not revert to the county general fund at the end of a county fiscal year.

22 ~~(h)~~ **(i)** Proceedings of the county election board under this section  
 23 are subject to IC 4-21.5.

24 SECTION 3. IC 3-9-8 IS ADDED TO THE INDIANA CODE AS  
 25 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
 26 1, 1999]:

27 **Chapter 8. Persuasion Polls and Telephone Solicitations**

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

32 **Sec. 2. As used in this chapter, "persuasion poll" means a**  
 33 **telephone survey or series of telephone surveys that are similar in**  
 34 **nature:**

35 **(1) that includes or totals more than one thousand (1,000)**  
 36 **calls;**

37 **(2) that references, other than in a basic preference question,**  
 38 **a candidate or group of candidates in any election or caucus;**

39 **(3) that is designed to:**

40 **(A) provide information that is negative or derogatory**  
 41 **about a candidate or group of candidates in any election or**  
 42 **caucus; or**



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1 (B) influence the respondent to vote for or against a  
 2 candidate or group of candidates in any election or caucus;  
 3 rather than to measure the public's opinion about the  
 4 candidates or issues in any election or caucus; and

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

6 (A) A list or directory is used, exclusively or in part, to  
 7 select respondents belonging to a particular subset or  
 8 combination of subsets of the population based on  
 9 demographic or political characteristics such as race, sex,  
 10 age, ethnicity, party affiliation, or like characteristics.

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

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

16 (D) The person who authorizes, sponsors, conducts, or  
 17 administers the poll does not collect or tabulate the results  
 18 of the poll.

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

21 Sec. 3. As used in this chapter, "political telephone solicitation"  
 22 means a telephone call made to a residence in which the caller  
 23 directly supports or opposes an elected official, a political party, a  
 24 political organization, or a candidate in an election or a caucus. A  
 25 political telephone solicitation does not include a poll or survey.

26 Sec. 4. (a) This section does not apply to a persuasion poll or  
 27 political telephone solicitation if the individuals participating in the  
 28 call know each other before the call.

29 (b) A person may not authorize, sponsor, conduct, or administer  
 30 a persuasion poll or political telephone solicitation unless, at the  
 31 end of the call, the caller identifies the person sponsoring and  
 32 authorizing the call by stating: "Paid for by (name of person  
 33 sponsoring the call), on behalf of (name of person authorizing the  
 34 call).".

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

38 (d) If the person sponsoring or authorizing the call is a  
 39 candidate or candidate's committee, the caller shall also disclose  
 40 the candidate's name and the office sought by the candidate.  
 41 However, if a candidate or candidate's committee neither sponsors  
 42 nor authorizes the call, the caller shall state that the call is not



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1 authorized by any candidate or candidate's committee.

2 (e) The person sponsoring or authorizing the call does not  
3 violate this section if the respondent voluntarily terminates the call  
4 or asks to be called back before the required disclosures are made.

5 **Sec. 5.** A person may not state or imply false or fictitious names  
6 or addresses when making the disclosures required under section  
7 4 of this chapter.

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

11 (b) The person sponsoring or authorizing the call may make the  
12 required disclosures by means of a computerized or prerecorded  
13 disclaimer message. However, a computerized or prerecorded  
14 disclaimer message must offer respondents an option to repeat the  
15 message.

16 SECTION 4. IC 3-14-1-17 IS ADDED TO THE INDIANA CODE  
17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
18 1, 1999]: **Sec. 17.** A person who violates IC 3-9-8-4 by failing to  
19 make the required disclosures or by making false or fictitious  
20 disclosures commits a Class B misdemeanor.

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