
HOUSE BILL No. 1554

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-9; 6IC 3-14-1.

Synopsis: Persuasion polls; false political communications. Defines a "persuasion poll" as a telephone survey that: (1) includes more than 100 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 person called to vote for or against a candidate. Prohibits a person from sponsoring, authorizing, conducting, or administering a persuasion poll unless the caller provides certain information at the beginning and the end of 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. Provides that a persuasion poll telephone call may not be made on the day of an election or within five days immediately preceding an election. 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 and who violates these provisions must pay a civil penalty of \$50 for each offending call, up to a maximum civil penalty of \$10,000 for each poll conducted, plus any investigative costs incurred. Makes it a Class A misdemeanor for a person to intentionally participate in the preparation, dissemination, or broadcast of paid political advertising or campaign material, or in the drafting of a letter to the editor, that: (1) concerns the personal or political character or act of a candidate; and (2) is designed to or tends to elect,
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Effective: July 1, 2011.

Grubb, Steuerwald

January 20, 2011, read first time and referred to Committee on Elections and Apportionment.



Digest Continued

injure, promote, or defeat the candidate; if the advertising or campaign material or the letter contains information or a statement that was false and the person knew of the falsity or acted with reckless disregard as to truth or falsity. Exempts a person who merely disseminates or broadcasts the material or letter in the normal course of business. Provides that a candidate for nomination or election to public office (if successful) forfeits the nomination or public office if the candidate commits a violation, unless the candidate's violation was trivial or occurred despite the candidate's good faith.

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Introduced

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1554

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, AS AMENDED BY P.L.221-2005,
2 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 16. (a) In addition to any other penalty imposed,
4 a person who does any of the following is subject to a civil penalty
5 under this section:
6 (1) Fails to file with the election division a report in the manner
7 required under IC 3-9-5.
8 (2) Fails to file a statement of organization required under
9 IC 3-9-1.
10 (3) Is a committee or a member of a committee who disburses or
11 expends money or other property for any political purpose before
12 the money or other property has passed through the hands of the
13 treasurer of the committee.
14 (4) Makes a contribution other than to a committee subject to this
15 article or to a person authorized by law or a committee to receive



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

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1 statement. If the commission determines that a person failed to file the
 2 report or statement of organization by the deadline prescribed under
 3 this article, the commission shall assess a civil penalty. The penalty is
 4 fifty dollars (\$50) for each day the report or statement is late, with the
 5 afternoon of the final date for filing the report or statement being
 6 calculated as the first day. The civil penalty under this subsection may
 7 not exceed one thousand dollars (\$1,000) plus any investigative costs
 8 incurred and documented by the election division. The civil penalty
 9 limit under this subsection applies to each report separately.

10 (d) This subsection applies to a person who is subject to a civil
 11 penalty under subsection (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), or
 12 (a)(10). If the commission determines that a person is subject to a civil
 13 penalty under subsection (a), the commission may assess a civil penalty
 14 of not more than one thousand dollars (\$1,000), plus any investigative
 15 costs incurred and documented by the election division.

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

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

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

31 (g) This subsection applies to a person who is subject to a civil
 32 penalty under subsection (a)(12). If the commission determines that a
 33 corporation or a labor organization has failed to designate a
 34 contribution in violation of IC 3-9-2-5(c), the commission shall assess
 35 a civil penalty equal to the greater of the following, plus any
 36 investigative costs incurred and documented by the election division:

- 37 (1) Two (2) times the amount of the contributions undesignated.
- 38 (2) One thousand dollars (\$1,000).

39 (h) This subsection applies to a person who is subject to a civil
 40 penalty under subsection (a)(13). If the commission determines, by
 41 unanimous vote of the entire membership of the commission, that a
 42 person has violated IC 3-9-3-5, the commission may assess a civil

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1 penalty of not more than five hundred dollars (\$500), plus any
2 investigative costs incurred and documented by the election division.

3 (i) This subsection applies to a person who is subject to a civil
4 penalty under subsection (a)(14). If the commission determines, by
5 unanimous vote of the entire membership of the commission, that a
6 person has served as the treasurer of a committee in violation of any of
7 the statutes listed in subsection (a)(14), the commission may assess a
8 civil penalty of not more than five hundred dollars (\$500), plus any
9 investigative costs incurred and documented by the election division.

10 (j) This subsection applies to a person who is subject to a civil
11 penalty under subsection (a)(15). The commission may assess a civil
12 penalty equal to the costs incurred by the election division for the
13 manual entry of the data contained in the report or statement, plus any
14 investigative costs incurred and documented by the election division.

15 **(k) This subsection applies to a candidate, candidate's**
16 **committee, regular party committee, political action committee, or**
17 **legislative caucus committee that is subject to a civil penalty under**
18 **subsection (a)(16). If the commission determines that the**
19 **candidate, candidate's committee, regular party committee,**
20 **political action committee, or legislative caucus committee has**
21 **sponsored a persuasion poll that included calls that did not comply**
22 **with IC 3-9-8-4, IC 3-9-8-5, IC 3-9-8-6, or IC 3-9-8-7, the**
23 **commission may assess a civil penalty of up to three (3) times the**
24 **amount expended by the candidate, candidate's committee, regular**
25 **party committee, political action committee, or legislative caucus**
26 **committee in sponsoring the poll, plus any investigative costs**
27 **incurred and documented by the election division. If the**
28 **commission determines that a civil penalty is warranted, the**
29 **commission shall consider the following factors in determining the**
30 **amount of the penalty:**

31 (1) the number of calls made in violation of IC 3-9-8-4,
32 IC 3-9-8-5, IC 3-9-8-6, or IC 3-9-8-7; and

33 (2) whether the calls in violation of IC 3-9-8-4, IC 3-9-8-5,
34 IC 3-9-8-6, or IC 3-9-8-7 were isolated events or part of a
35 pattern of violations.

36 (l) This subsection applies to a person who is subject to a civil
37 penalty under subsection (a)(17). If the commission determines that
38 a person has violated IC 3-9-8-4, IC 3-9-8-5, IC 3-9-8-6, or
39 IC 3-9-8-7, the commission shall assess a civil penalty. The penalty
40 is fifty dollars (\$50) for each call that violates IC 3-9-8-4,
41 IC 3-9-8-5, IC 3-9-8-6, or IC 3-9-8-7. The civil penalty under this
42 subsection may not exceed ten thousand dollars (\$10,000) for each

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poll conducted, plus any investigative costs incurred and documented by the election division.

~~(k)~~ **(m)** All civil penalties collected under this section shall be deposited with the treasurer of state in the campaign finance enforcement account.

~~(l)~~ **(n)** Proceedings of the commission under this section are subject to IC 4-21.5.

SECTION 2. IC 3-9-4-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 17. (a) In addition to any other penalty imposed, a person who does any of the following is subject to a civil penalty under this section:

- (1) Fails to file with a county election board a report in the manner required under IC 3-9-5.
- (2) Fails to file a statement of organization required under IC 3-9-1.
- (3) Is a committee or a member of a committee who disburses or expends money or other property for any political purpose before the money or other property has passed through the hands of the treasurer of the committee.
- (4) Makes a contribution other than to a committee subject to this article or to a person authorized by law or a committee to receive contributions in the committee's behalf.
- (5) Is a corporation or labor organization that exceeds any of the limitations on contributions prescribed by IC 3-9-2-4.
- (6) Makes a contribution in the name of another person.
- (7) Accepts a contribution made by one (1) person in the name of another person.
- (8) Is not the treasurer of a committee subject to this article, and pays any expenses of an election or a caucus except as authorized by this article.
- (9) Commingles the funds of a committee with the personal funds of an officer, a member, or an associate of the committee.
- (10) Wrongfully uses campaign contributions in violation of IC 3-9-3-4.
- (11) Fails to designate a contribution as required by IC 3-9-2-5(c).
- (12) Violates IC 3-9-3-5.
- (13) Serves as a treasurer of a committee in violation of any of the following:
 - (A) IC 3-9-1-13(1).
 - (B) IC 3-9-1-13(2).
 - (C) IC 3-9-1-18.
- (14) Is a candidate, candidate's committee, regular party**

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1 **committee, or political action committee that sponsors a**
2 **persuasion poll (as defined in IC 3-9-8-2) that does not comply**
3 **with IC 3-9-8-4, IC 3-9-8-5, IC 3-9-8-6, or IC 3-9-8-7.**

4 **(15) Authorizes, conducts, or administers a persuasion poll**
5 **that does not comply with IC 3-9-8-4, IC 3-9-8-5, IC 3-9-8-6,**
6 **or IC 3-9-8-7.**

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

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

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

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

41 (f) This subsection applies to a person who is subject to a civil
42 penalty under subsection (a)(11). If the county election board

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1 determines that a corporation or a labor organization has failed to
 2 designate a contribution in violation of IC 3-9-2-5(c), the board shall
 3 assess a civil penalty equal to the greater of the following, plus any
 4 investigative costs incurred and documented by the board:

- 5 (1) Two (2) times the amount of the contributions undesignated.
- 6 (2) One thousand dollars (\$1,000).

7 (g) This subsection applies to a person who is subject to a civil
 8 penalty under subsection (a)(12). If the county election board
 9 determines, by unanimous vote of the entire membership of the board,
 10 that a person has violated IC 3-9-3-5, the board may assess a civil
 11 penalty of not more than five hundred dollars (\$500), plus any
 12 investigative costs incurred and documented by the board.

13 (h) This subsection applies to a person who is subject to a civil
 14 penalty under subsection (a)(13). If the county election board
 15 determines, by unanimous vote of the entire membership of the board,
 16 that a person has served as the treasurer of a committee in violation of
 17 any of the statutes listed in subsection (a)(13), the board may assess a
 18 civil penalty of not more than five hundred dollars (\$500), plus any
 19 investigative costs incurred and documented by the board.

20 **(i) This subsection applies to a candidate, candidate's**
 21 **committee, regular party committee, or political action committee**
 22 **that is subject to a civil penalty under subsection (a)(14). If the**
 23 **county election board determines by a unanimous vote that the**
 24 **candidate, candidate's committee, regular party committee, or**
 25 **political action committee has sponsored a persuasion poll that**
 26 **included calls that did not comply with IC 3-9-8-4, IC 3-9-8-5,**
 27 **IC 3-9-8-6, or IC 3-9-8-7, the county election board may assess a**
 28 **civil penalty of up to three (3) times the amount expended by the**
 29 **candidate, candidate's committee, regular party committee, or**
 30 **political action committee in sponsoring the poll, plus any**
 31 **investigative costs incurred and documented by the county election**
 32 **board. If the county election board determines by a unanimous**
 33 **vote that a civil penalty is warranted, the county election board**
 34 **shall consider the following factors in determining the amount of**
 35 **the penalty:**

- 36 (1) the number of calls made in violation of IC 3-9-8-4,
- 37 IC 3-9-8-5, IC 3-9-8-6, or IC 3-9-8-7; and
- 38 (2) whether the calls in violation of IC 3-9-8-4, IC 3-9-8-5,
- 39 IC 3-9-8-6, or IC 3-9-8-7 were isolated events or part of a
- 40 pattern of violations.

41 (j) This subsection applies to a person who is subject to a civil
 42 penalty under subsection (a)(15). If the county election board

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1 determines that a person has violated IC 3-9-8-4, IC 3-9-8-5,
2 IC 3-9-8-6, IC 3-9-8-7, the county election board shall assess a civil
3 penalty. The penalty is fifty dollars (\$50) for each call that violates
4 IC 3-9-8-4, IC 3-9-8-5, IC 3-9-8-6, or IC 3-9-8-7. The civil penalty
5 under this subsection may not exceed ten thousand dollars
6 (\$10,000) for each poll conducted, plus any investigative costs
7 incurred and documented by the county election board.

8 (†) (k) All civil penalties collected under this section shall be
9 deposited with the county treasurer to be deposited by the county
10 treasurer in a separate account to be known as the campaign finance
11 enforcement account. The funds in the account are available, with the
12 approval of the county fiscal body, to augment and supplement the
13 funds appropriated for the administration of this article.

14 (‡) (l) Money in the campaign finance enforcement account does not
15 revert to the county general fund at the end of a county fiscal year.

16 (†) (m) Proceedings of the county election board under this section
17 are subject to IC 4-21.5.

18 SECTION 3. IC 3-9-8 IS ADDED TO THE INDIANA CODE AS
19 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
20 1, 2011]:

21 **Chapter 8. Persuasion Polls**

22 **Sec. 1. As used in this chapter, "basic preference question"**
23 **means a question that provides a person called with a list of**
24 **candidates' names and asks which candidate the person called**
25 **supports in a particular election or caucus.**

26 **Sec. 2. As used in this chapter, "persuasion poll" means a**
27 **telephone survey or series of telephone surveys that is similar in**
28 **nature and that satisfies the following:**

- 29 (1) The survey or series of surveys includes or totals more
30 than one hundred (100) calls.
- 31 (2) The survey or series of surveys references, other than in a
32 basic preference question, a candidate or group of candidates
33 in any election or caucus.
- 34 (3) The survey or series of surveys is designed to:
 - 35 (A) provide information that is negative or derogatory
36 about a candidate or group of candidates in any election or
37 caucus; or
 - 38 (B) influence the person called to vote for or against a
39 candidate or group of candidates in any election or caucus;
40 rather than to measure the public's opinion about the
41 candidates or issues in any election or caucus.
- 42 (4) At least one (1) of the following applies:

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- (A) A list or directory is used, exclusively or in part, to select persons called belonging to a particular subset or combination of subsets of the population based on demographic or political characteristics such as race, sex, age, ethnicity, party affiliation, or similar characteristics.
- (B) The poll takes less than three (3) minutes to complete, excluding time spent in identifying the person sponsoring and authorizing the poll.
- (C) The poll does not ask questions about the political or demographic characteristics of the persons called.
- (D) The person who authorizes, sponsors, conducts, or administers the poll does not collect or tabulate the results of the poll.
- (E) The poll is commenced not more than ten (10) days before an election.

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

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

(b) For purposes of this chapter, a person conducts business in Indiana if the person receives money or other remuneration to conduct or administer a persuasion poll that includes telephone calls that are made from:

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

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

Sec. 4. (a) A person may not sponsor, authorize, conduct, or administer a persuasion poll unless, at the beginning and end of the call, the caller provides the following information:

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- (1) The name of the caller.
- (2) The identity of the person sponsoring and authorizing the call by stating: "Paid for by (name of person sponsoring the call), on behalf of (name of person authorizing the call).".
- (3) The telephone number and address of the person sponsoring the call.
- (4) Any other information required by IC 3-9-3.5-5.

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

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

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

Sec. 6. (a) A caller who discloses the information required under section 4 of this chapter shall do so in a clear and intelligible manner and shall repeat the information upon the request of the respondent.

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

Sec. 7. A persuasion poll call may not be made on the day of an election or within five (5) days immediately preceding an election.

Sec. 8. A person who sponsors, authorizes, conducts, or administers a persuasion poll may not knowingly or intentionally block or attempt to block the display of the person's:

- (1) telephone number; or
 - (2) identity;
- by a respondent's caller ID service (as defined in IC 8-1-2.9-1) during a call that is part of the persuasion poll.

SECTION 4. IC 3-14-1-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 17.** A person who knowingly, intentionally, or recklessly sponsors, authorizes, conducts, or administers a persuasion poll (as defined in IC 3-9-8-2) that violates IC 3-9-8-4, IC 3-9-8-5, IC 3-9-8-6, or IC 3-9-8-7 commits a Class B

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SECTION 5. IC 3-14-1-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 18. A person who violates IC 3-9-8-8 by knowingly or intentionally blocking or attempting to block the person's telephone number or identity from a respondent's caller ID service (as defined in IC 8-1-2.9-1) commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction for a violation of IC 3-9-8-8.**

SECTION 6. IC 3-14-1-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 19. (a) Except as provided in subsection (b), a person who intentionally participates in the preparation, dissemination, or broadcast of paid political advertising or campaign material, or in the drafting of a letter to the editor, that:**

- (1) concerns the personal or political character or acts of a candidate for nomination or election to a public office**
- (2) is designed or tends to elect, injure, promote, or defeat the candidate; or**
- (3) contains information or a statement that is false;**

commits a Class A misdemeanor if the person knew that the material or letter contained information or a statement that was false or if the person took the action described in this subsection with reckless disregard as to whether the material or letter contained information or a statement that was false.

(b) Subsection (a) does not apply to a person or organization whose sole act is, in the normal course of business, the printing, manufacturing, or dissemination of the material or letter containing the false information or statement.

(c) Except as provided in subsection (e), if:

- (1) a candidate for nomination or election to a public office is convicted of a violation of subsection (a); or**
- (2) another person is found to have violated subsection (a) with the knowledge, consent, or connivance of a candidate for nomination or election to a public office;**

the court shall enter an order declaring that the candidate (if nominated or elected) has forfeited the nomination or office and that the nomination or office is vacant.

(d) An order entered under subsection (c) shall be filed with the person or entity that has the power to fill the vacancy or to call a caucus for the purpose of filling the vacancy. The vacancy shall be filled under IC 3-13. However:

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1 (1) the candidate whose nomination or election has been set
2 aside for a violation of subsection (a); or
3 (2) another person convicted of a violation of subsection (a);
4 may not be selected or elected to fill the vacancy, regardless of any
5 law to the contrary.
6 (e) If, during a trial for a violation of subsection (a), the court
7 finds that:
8 (1) although committed by the candidate or with the
9 candidate's knowledge, consent, or connivance, the offense:
10 (A) was trivial; or
11 (B) occurred because of accidental miscalculation or
12 another reasonable cause and not because of lack of good
13 faith; and
14 (2) it would be unjust for the candidate to forfeit the
15 candidate's nomination or election under subsection (c);
16 the candidate does not forfeit the nomination or election.
17 (f) The court findings described in subsection (e) are not a
18 defense in a criminal trial for a violation of subsection (a).

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