

# SENATE BILL No. 558

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 3-6; IC 3-7; IC 3-11; IC 3-12-1-13.

**Synopsis:** Election security. Requires the secretary of state to refer suspected criminal violations of election law for investigation by the appropriate prosecuting attorney. Establishes an administrative enforcement mechanism for enforcement of election laws other than campaign finance laws. Requires the statewide voter registration file to employ two-factor authentication to restrict access. Provides that all information concerning an absentee ballot application is confidential with some exceptions. Requires a communication that includes an absentee ballot application form to state certain information regarding the identity of the sender. Provides for administrative remedies for violations of this requirement. Requires the inspector to record certain data during election day regarding the number of voters waiting to vote. Establishes a procedure for documenting and investigating the failure of an election official to initial ballots. Requires voting system vendors to disclose certain information about foreign nationals who may control or have an ownership interest in the vendor.

**Effective:** Upon passage; July 1, 2019.

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January 14, 2019, read first time and referred to Committee on Elections.

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First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## SENATE BILL No. 558

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 3-6-3.7-6 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2019]: **Sec. 6. (a) If upon investigation, the secretary of state  
4 determines that a criminal violation of this title may have  
5 occurred, the secretary of state and the election division shall refer  
6 the facts drawn from the investigation to the prosecuting attorney  
7 of the judicial circuit in which the crime may have been committed.**

8 **(b) The secretary of state and election division shall assist the  
9 prosecuting attorney in prosecuting an action under this section,  
10 which may include an attorney employed by the secretary of state  
11 or the election division serving as a special deputy prosecutor  
12 appointed by the prosecuting attorney.**

13 SECTION 2. IC 3-6-4.9 IS ADDED TO THE INDIANA CODE AS  
14 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
15 1, 2019]:

16 **Chapter 4.9. Administrative Enforcement of Election Law**  
17 **Sec. 1. This chapter does not apply to enforcement of a provision**



- 1 of IC 3-9.
- 2 **Sec. 2.** As used in this chapter, "agency" refers to the following:
- 3 (1) The election division, if the commission is the enforcement
- 4 authority.
- 5 (2) The county election board, if the county election board is
- 6 the enforcement authority.
- 7 **Sec. 3.** As used in this chapter, "enforcement authority" refers
- 8 to either of the following:
- 9 (1) The commission, which has exclusive jurisdiction under
- 10 this chapter for matters relating to elections and candidates
- 11 for state, legislative, and judicial offices.
- 12 (2) The county election board, which has jurisdiction under
- 13 this chapter for matters relating to elections and candidates
- 14 for local and school board offices.
- 15 **Sec. 4.** Proceedings of an enforcement authority under this
- 16 chapter are subject to IC 4-21.5.
- 17 **Sec. 5.** (a) If the commission is the enforcement authority, a
- 18 commission member, or the co-directors, with the authorization of
- 19 the commission, may conduct a hearing or an investigation, take
- 20 evidence, and report back to the commission for its consideration
- 21 and action.
- 22 (b) If a county election board is the enforcement authority, a
- 23 county election board member may conduct a hearing or an
- 24 investigation, take evidence, and report back to the board for its
- 25 consideration and action.
- 26 **Sec. 6.** If a civil penalty is imposed under this chapter, any
- 27 investigative costs incurred and documented by the agency shall be
- 28 added to the civil penalty imposed.
- 29 **Sec. 7.** Civil penalties and investigative costs shall be deposited
- 30 in the fund designated under this chapter.
- 31 **Sec. 8.** An enforcement authority may, upon the unanimous vote
- 32 of its entire membership, find that imposition of a civil penalty
- 33 required to be imposed under this chapter would be unjust under
- 34 the circumstances and do either of the following:
- 35 (1) Waive the penalty.
- 36 (2) Reduce the penalty to an amount specified by the
- 37 enforcement authority.
- 38 **Sec. 9.** (a) If a person is notified by the agency that the
- 39 enforcement authority may assess a proposed civil penalty under
- 40 this chapter against the person, the person may enter into an
- 41 agreement with the agency to pay the proposed penalty and waive
- 42 a hearing before the enforcement authority.



1           **(b) An agreement entered into under this section must:**

2           **(1) provide for the payment of the entire proposed civil**  
 3           **penalty not later than the date of the execution of the**  
 4           **agreement; and**

5           **(2) be presented to the enforcement authority by the agency**  
 6           **for ratification at the enforcement authority's next regularly**  
 7           **scheduled meeting.**

8           **Sec. 10. (a) This section does not apply to a person whose sole**  
 9           **act is, in the normal course of business, the printing, distribution,**  
 10           **or mailing of the communication containing the information.**

11           **(b) A person who violates IC 3-11-4-5.2 by mailing a**  
 12           **communication that does not contain the information in the**  
 13           **manner described by IC 3-11-4-5.2(b) or IC 3-11-4-5.2(c) is subject**  
 14           **to a civil penalty as provided in this section.**

15           **(c) If the enforcement authority determines that a person is**  
 16           **subject to a civil penalty under this section, the enforcement**  
 17           **authority may assess a civil penalty of not more than one thousand**  
 18           **dollars (\$1,000) for each communication circulated or published**  
 19           **(but not for each of the copies of the communication actually**  
 20           **circulated or published).**

21           **(d) Penalties and costs collected under this section shall be**  
 22           **deposited in the election administration assistance fund established**  
 23           **by IC 3-11-6.5-2.**

24           **SECTION 3. IC 3-7-26.3-15, AS AMENDED BY P.L.128-2015,**  
 25           **SECTION 98, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**  
 26           **JULY 1, 2019]: Sec. 15. (a) As required under 52 U.S.C. 21083, the**  
 27           **election division and each county voter registration office shall provide**  
 28           **adequate technological security measures to prevent unauthorized**  
 29           **access to the computerized list.**

30           **(b) The computerized list must employ two-factor**  
 31           **authentication methods to restrict access to the computerized list.**

32           **(c) A person may not access the computerized list without**  
 33           **touching a token inserted into a workstation computer tower to**  
 34           **authenticate that the person is physically present at a location**  
 35           **where the person is authorized to access the list.**

36           **(d) The county voter registration officer shall file a statement**  
 37           **with the election division setting forth the name and contact**  
 38           **information of at least one (1) individual who is to serve as a point**  
 39           **of contact for the state to communicate with the county regarding**  
 40           **cybersecurity issues.**

41           **SECTION 4. IC 3-7-30-7 IS ADDED TO THE INDIANA CODE**  
 42           **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**



1 2019]: Sec. 7. (a) This section does not apply to a paper original  
 2 or copy of an absentee ballot application filed with a county  
 3 election board.

4 (b) All information concerning an absentee ballot application  
 5 entered into the computerized list is confidential, except as  
 6 provided in this section.

7 (c) Except as provided in subsection (d), a person may not use  
 8 the computerized list to produce a report or provide a copy of such  
 9 a report to any person including any of the following information:

10 (1) Any information set forth in an absentee ballot  
 11 application.

12 (2) Information regarding any action taken by a county with  
 13 regard to an absentee ballot application.

14 (3) Any information relating to the issuance and return of any  
 15 absentee ballot by the voter.

16 (d) Notwithstanding subsection (c) a report may be produced  
 17 and given only to any of the following:

18 (1) The individual who requested an absentee ballot.

19 (2) A law enforcement agency conducting an investigation,  
 20 upon written request by the law enforcement agency.

21 (3) A person described in IC 3-7-26.4-6 who has paid a  
 22 subscription fee required under IC 3-7-26.4-12 and whose  
 23 subscription has not expired.

24 (4) A county election board for purposes of administering  
 25 absentee voting.

26 SECTION 5. IC 3-11-4-5.2 IS ADDED TO THE INDIANA CODE  
 27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 28 1, 2019]: Sec. 5.2. (a) This section does not apply to a direct mailing  
 29 of one hundred (100) or less substantially similar pieces of mail.

30 (b) A communication including an absentee ballot application  
 31 form:

32 (1) approved or authorized for use in Indiana; and

33 (2) transmitted through the United States Postal Service;

34 must include the information required by this section.

35 (c) The communication must set forth the name and mailing  
 36 address of the person who mailed the communication and be  
 37 presented in a clear and conspicuous manner to give the recipient  
 38 adequate notice of the identity of the person who mailed the  
 39 communication. A communication does not comply with this  
 40 requirement if the information is difficult to read or is placed in a  
 41 location which is easily overlooked.

42 (d) The communication must satisfy both of the following:



1           **(1) The communication must contain the information**  
 2           **described in subsection (c) in at least 12 point type size that is**  
 3           **clearly readable by the recipient of the mailing.**

4           **(2) The information must be printed with a reasonable degree**  
 5           **of color contrast between the background and the printed**  
 6           **statement. A communication complies with this subdivision if**  
 7           **the information is printed in black text on a white background**  
 8           **or the degree of color contrast between the background and**  
 9           **the text of the information is not less than the color contrast**  
 10           **between the background and the largest text included in the**  
 11           **mailing.**

12           SECTION 6. IC 3-11-4-19 IS AMENDED TO READ AS  
 13           FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) Subject to  
 14           IC 3-5-4-9, a ballot that is mailed must bear the circuit court clerk's  
 15           official seal and signature or facsimile signature on the back of the  
 16           ballot. Before the ballot is mailed:

17           (1) the two (2) members of the absentee voter board in the office  
 18           of the circuit court clerk; or

19           (2) the two (2) appointed members of the county election board  
 20           or their designated representatives;

21           shall place their initials in ink on the back of the ballot. The initials  
 22           must be in the persons' ordinary handwriting or printing and without a  
 23           distinguishing mark of any kind. No other initialing of the absentee  
 24           ballot is necessary.

25           **(b) If one (1) of the members of the absentee voter board in the**  
 26           **office of the circuit court clerk or one (1) of the members of the**  
 27           **county election board or their designated representative fails to**  
 28           **initial the ballot as required under subsection (a), the other**  
 29           **member or representative shall do both of the following:**

30           (1) **Note the failure to initial on the back of the ballot, or, on**  
 31           **the security envelope if the ballot has already been sealed**  
 32           **within the envelope.**

33           (2) **Before election day, file a written statement with the**  
 34           **county election board providing the information known to the**  
 35           **member or representative regarding this failure to initial the**  
 36           **ballot. The statement under this subdivision must set forth the**  
 37           **names of the voters whose absentee ballots were not properly**  
 38           **initialed, if those names are known.**

39           **(c) The county election board shall promptly conduct a hearing**  
 40           **on the matter before election day under IC 3-6-5-31 to determine**  
 41           **whether a violation of election law has occurred and if so, take the**  
 42           **action it considers appropriate under the circumstances.**



1            ~~(b)~~ **(d)** An absentee ballot that is voted before an absentee voter  
 2 board under IC 3-11-10-25, ~~or~~ IC 3-11-10-26, **or IC 3-11-10-26.3**,  
 3 must bear the seal, signature, and initials prescribed by IC 3-11-10-27.

4            SECTION 7. IC 3-11-8-9 IS AMENDED TO READ AS FOLLOWS  
 5 [EFFECTIVE JULY 1, 2019]: Sec. 9. The inspector of each precinct  
 6 shall **do both of the following**:

7            **(1)** Proclaim the opening and closing of the polls to the people  
 8 outside the polls in a loud tone of voice.

9            **(2) Record the number of individuals who are waiting to vote,**  
 10 **but have not yet signed the poll list, as of each of the following**  
 11 **times:**

12            **(A) The opening of the polls.**

13            **(B) 12:30 p.m. on election day.**

14            **(C) The closing of the polls.**

15            **The inspector shall record these numbers on a form**  
 16 **prescribed under IC 3-5-4-8.**

17            SECTION 8. IC 3-11-9-3, AS AMENDED BY P.L.221-2005,  
 18 SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 19 UPON PASSAGE]: Sec. 3. (a) The following individuals shall assist  
 20 a voter described by section 2 of this chapter who requests assistance  
 21 in voting before entering the voting booth but does not wish to  
 22 designate a person under that section.

23            (1) The two (2) judges if the voter is voting at a precinct.

24            (2) Two (2) members of the absentee voter board if the voter is  
 25 voting absentee.

26            ~~(b) This subsection does not apply to a person designated by a voter~~  
 27 ~~described by subsection (a) who is voting absentee before two (2)~~  
 28 ~~members of the absentee voter board.~~ The individuals described in  
 29 subsection (a) shall execute a sworn affidavit on a form provided by the  
 30 precinct election board stating that, to the best of the individuals'  
 31 knowledge, the voter:

32            (1) is a voter with disabilities or is unable to read or write English;

33            (2) has requested assistance in voting; and

34            (3) does not wish to designate a person to assist the voter in  
 35 voting under section 2 of this chapter.

36            (c) The two (2) individuals described in subsection (a) shall then  
 37 accompany the voter into the voting booth to assist the voter in marking  
 38 the voter's paper ballot or ballot card or in registering the voter's vote  
 39 on the electronic voting system.

40            SECTION 9. IC 3-11-10-27, AS AMENDED BY P.L.169-2015,  
 41 SECTION 124, IS AMENDED TO READ AS FOLLOWS  
 42 [EFFECTIVE UPON PASSAGE]: Sec. 27. (a) This section does not



1 apply to a ballot mailed to a voter under this chapter.

2 (b) Subject to IC 3-5-4-9, before a ballot is voted under section 25  
3 of this chapter before an absentee voter board, it must bear the circuit  
4 court clerk's official seal and signature or facsimile signature and be  
5 initialed by the absentee voter board visiting the voter under section  
6 25(b) of this chapter (except in a county subject to subsection (d)).

7 (c) Subject to IC 3-5-4-9, before a ballot is:

8 (1) voted under section 26 **or 26.3** of this chapter; or

9 (2) placed in a secrecy envelope if it has been marked using a  
10 marking device for an optical scan ballot;

11 the ballot must bear the circuit court clerk's official seal and signature  
12 or facsimile signature and be initialed by the county election board or  
13 the board's designated representatives under IC 3-11-4-19.

14 (d) A county election board may adopt a resolution providing that  
15 the absentee ballots to be voted before an absentee voter board visiting  
16 the voter under section 25(b) of this chapter must be initialed by the  
17 county election board or the board's representatives under IC 3-11-4-19  
18 and not by the absentee voter board visiting the voter. A resolution  
19 adopted under this subsection remains in effect until rescinded by the  
20 county election board. The election board may not rescind the  
21 resolution during the final sixty (60) days before an election.

22 (e) The initials must be:

23 (1) in ink on the back of the ballot, in the person's ordinary  
24 handwriting or printing, and without a distinguishing mark of any  
25 kind; or

26 (2) in a vote center county using an electronic poll list:

27 (A) printed on the back of the ballot by a printer separate from  
28 the electronic poll list, immediately before the ballot is  
29 delivered to the voter; and

30 (B) the initials of the county election board or the board's  
31 representatives captured through the electronic signature pad  
32 or tablet at the time the county election board or the board's  
33 representatives log into the electronic poll book system.

34 (f) A resolution adopted under subsection (d) may also provide that  
35 a precinct designation is not required to be preprinted on absentee  
36 ballots printed immediately before the ballot is delivered to a voter, but  
37 may be added in the same manner as the initials of the county election  
38 board or the board's representatives under IC 3-11-4-19 are added  
39 under subsection (e).

40 (g) No other initialing of the absentee ballot is necessary.

41 **(h) If one (1) of the members of the absentee voter board in the**  
42 **office of the circuit court clerk or one (1) of the members of the**





1 county election board or their designated representative fails to  
 2 initial the ballot as required under this chapter, the other member  
 3 or representative shall do both of the following:

4 (1) Note the failure to initial on the back of the ballot, or on  
 5 the security envelope if the ballot has already been sealed  
 6 within the envelope.

7 (2) Before election day, file a written statement with the  
 8 county election board providing the information known to the  
 9 member or representative regarding this failure to initial the  
 10 ballot. The statement under this subdivision must set forth the  
 11 names of the voters whose absentee ballots were not properly  
 12 initialed, if those names are known.

13 (i) The county election board shall promptly conduct a hearing  
 14 on the matter before election day under IC 3-6-5-31 to determine  
 15 whether a violation of election law has occurred and if so, take the  
 16 action it considers appropriate under the circumstances.

17 SECTION 10. IC 3-11-17-2, AS AMENDED BY P.L.219-2013,  
 18 SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 19 JULY 1, 2019]: Sec. 2. In addition to any other penalty imposed, a  
 20 vendor who knowingly, recklessly, or negligently:

21 (1) markets, sells, leases, installs, implements, or permits the use  
 22 of a voting system or an electronic poll book in an election  
 23 conducted in Indiana in violation of this title; or

24 (2) violates section 8 of this chapter;

25 is subject to a civil penalty under this chapter.

26 SECTION 11. IC 3-11-17-7.2 IS ADDED TO THE INDIANA  
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 28 [EFFECTIVE JULY 1, 2019]: Sec. 7.2. (a) This section applies to a  
 29 person who, on July 1, 2019, is a vendor described in section 1 of  
 30 this chapter.

31 (b) The vendor shall file the statement required by section 8 of  
 32 this chapter not later than noon August 1, 2019.

33 (c) This section expires July 1, 2021.

34 SECTION 12. IC 3-11-17-8 IS ADDED TO THE INDIANA CODE  
 35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 36 1, 2019]: Sec. 8. (a) A vendor described in section 1 of this chapter  
 37 shall file a statement with the election division that:

38 (1) states the name of any person who:

39 (A) is a foreign national; and

40 (B) directly or indirectly owns or controls the vendor; and

41 (2) states the nature and extent of the ownership or control of  
 42 the foreign national.



1           **(b) The statement described in subsection (a) must be amended**  
 2 **to reflect any change in the identity of a foreign national subject to**  
 3 **this section or in the nature and extent of the ownership or control**  
 4 **of the foreign national by filing an amended statement with the**  
 5 **election division not later than noon thirty (30) days after the**  
 6 **change occurs.**

7           SECTION 13. IC 3-12-1-13, AS AMENDED BY P.L.64-2014,  
 8 SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 UPON PASSAGE]: Sec. 13. (a) This section applies only to absentee  
 10 ballots.

11           (b) The whole ballot may not be counted unless the ballot is  
 12 endorsed with the initials of:

13           (1) the two (2) members of the absentee voter board under  
 14 IC 3-11-4-19, IC 3-11-10-25, IC 3-11-10-26, IC 3-11-10-26.3, or  
 15 IC 3-11-18.1-11; or

16           (2) the two (2) appointed members of the county election board  
 17 (or their designated representatives) under IC 3-11-4-19.

18           **(c) Notwithstanding subsection (b), if the county election board**  
 19 **determines:**

20           **(1) at a hearing required under IC 3-11-4-19(c) or**  
 21 **IC 3-11-10-27(i), that one (1) of the members of the absentee**  
 22 **voter board in the office of the circuit court clerk or one (1) of**  
 23 **the members of the county election board or their designated**  
 24 **representative failed to initial the ballot as required under**  
 25 **IC 3-11-4-19 or IC 3-11-10; and**

26           **(2) the evidence presented at this hearing, including the**  
 27 **written statement required to be filed under IC 3-11-4-19(b)**  
 28 **or IC 3-11-10-27(h) establishes that an individual deliberately**  
 29 **failed to initial the absentee ballot as required by law;**

30 **the county election board shall order that the absentee ballot be**  
 31 **counted, notwithstanding the absence of the initials.**

32           SECTION 14. An emergency is declared for this act.

