

House File 2377 - Introduced

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BY THOMSON

A BILL FOR

1 An Act establishing the criminal offense of engaging in a
2 fraudulent polling scheme, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

unofficial

1 Section 1. LEGISLATIVE FINDINGS — INTENT. The general
2 assembly finds and declares all of the following:

3 1. The state has a compelling interest in protecting donors,
4 consumers, and the public from fraudulent fundraising and
5 solicitation schemes.

6 2. Knowingly false representations concerning objective
7 facts, such as the existence of data, the use of scientific
8 methodology, or the independence of a purportedly neutral actor,
9 are materially different than opinions or political advocacy.

10 3. Fraudulent schemes that use fabricated polling data or
11 conceal campaign coordination undermine transparency and evade
12 campaign-finance disclosure requirements.

13 4. This Act regulates conduct and conspiracies, and any
14 regulation of speech is incidental to preventing fraud and
15 deception.

16 5. This Act is not intended to regulate the accuracy of
17 political viewpoints, predictions, or opinions, nor to penalize
18 good-faith methodological disagreements.

19 Sec. 2. NEW SECTION. **714.30 Engaging in a fraudulent**
20 **polling scheme.**

21 1. A person commits the offense of engaging in a fraudulent
22 polling scheme when the person knowingly, intentionally, and with
23 the specific intent to obtain money or induce material action,
24 either directly or through a conspiracy with one or more persons,
25 does all of the following:

26 a. Makes or causes to be made a materially false
27 representation of an objective fact concerning:

28 (1) The existence of polling data or survey results.

29 (2) The collection of responses from any population.

30 (3) The use of a neutral, scientific, or methodological
31 polling process.

32 (4) The source, sponsorship, or authorship of purported
33 polling data.

34 (5) The independence or nonalignment of any person or entity
35 presented as neutral or independent.

1 b. Disseminates or causes the dissemination of such
2 representations in connection with a political campaign.

3 c. Uses or relies upon such representations to do any of the
4 following:

5 (1) Solicit or obtain campaign contributions or donations.

6 (2) Raise funds for a candidate, committee, or political
7 cause.

8 (3) Induce any person to purchase goods or services, attend
9 an event, visit a business, or take other action of material or
10 economic consequence.

11 (4) Influence campaign-related expenditures.

12 d. Knows that the representation is false at the time the
13 representation is made.

14 2. A violation of this section includes any scheme in which
15 all of the following occur:

16 a. A candidate, campaign committee, or agent coordinates with
17 another person or entity.

18 b. The coordinated person or entity is publicly represented,
19 explicitly or implicitly, as independent, neutral, or nonaligned.

20 c. Such false representation of independence is material to
21 fundraising, solicitation, or inducement of action.

22 3. A conspiracy to violate this section constitutes a
23 violation. Each conspirator is criminally liable for foreseeable
24 acts in furtherance of the scheme, and is jointly and severally
25 liable in any civil action.

26 4. A person who violates this section commits the following:

27 a. For a first offense, a serious misdemeanor.

28 b. For a second offense, an aggravated misdemeanor.

29 c. For a third or subsequent offense, a class "D" felony.

30 5. Funds obtained through the fraudulent scheme in violation
31 of this section are subject to forfeiture.

32 6. A private cause of action exists for any person who
33 contributed money, purchased goods or services, attended an
34 event, or otherwise took material action. Available remedies
35 include actual damages, statutory damages per violation, treble

1 damages upon proof of knowing misconduct, reasonable attorney
2 fees and costs, and injunctive or declaratory relief.

3 7. This section does not apply to any of the following:

4 a. Opinions, predictions, advocacy, or commentary.

5 b. Disclosed internal campaign surveys.

6 c. Informal or nonscientific surveys clearly labeled as such.

7 d. Good-faith methodological disagreements.

8 8. A clear and conspicuous disclosure that polling data
9 is informal, advocacy-based, hypothetical, or aligned with a
10 campaign constitutes a complete defense.

11 EXPLANATION

12 The inclusion of this explanation does not constitute agreement with
13 the explanation's substance by the members of the general assembly.

14 This bill establishes the criminal offense of engaging in a
15 fraudulent polling scheme.

16 The bill provides that a person commits the offense of
17 engaging in a fraudulent polling scheme when the person
18 knowingly, intentionally, and with the specific intent to obtain
19 money or induce material action, either directly or through
20 a conspiracy with one or more persons, does all of the
21 following: makes or causes to be made a materially false
22 representation of an objective fact concerning certain topics;
23 disseminates or causes the dissemination of such representations
24 in connection with a political campaign; uses or relies upon such
25 representations; and knows that the representation is false at
26 the time the representation is made.

27 The bill provides that a violation of the bill includes
28 any scheme in which all of the following occur: a candidate,
29 campaign committee, or agent coordinates with another person or
30 entity; the coordinated person or entity is publicly represented,
31 explicitly or implicitly, as independent, neutral, or nonaligned;
32 and such false representation of independence is material to
33 fundraising, solicitation, or inducement of action.

34 A conspiracy to violate the bill constitutes a violation.
35 Each conspirator is criminally liable for foreseeable acts in

1 furtherance of the scheme, and is jointly and severally liable
2 in any civil action.

3 The bill provides that a person who violates the bill commits
4 the following: for a first offense, a serious misdemeanor; for
5 a second offense, an aggravated misdemeanor; or for a third or
6 subsequent offense, a class "D" felony. Funds obtained through
7 the fraudulent scheme in violation of the bill are subject to
8 forfeiture. A serious misdemeanor is punishable by confinement
9 for no more than one year and a fine of at least \$430 but not
10 more than \$2,560. An aggravated misdemeanor is punishable by
11 confinement for no more than two years and a fine of at least
12 \$855 but not more than \$8,540. A class "D" felony is punishable
13 by confinement for no more than five years and a fine of at least
14 \$1,025 but not more than \$10,245.

15 The bill provides for a private cause of action for any person
16 who contributed money, purchased goods or services, attended an
17 event, or otherwise took material action. Available remedies
18 include actual damages, statutory damages per violation, treble
19 damages upon proof of knowing misconduct, reasonable attorney
20 fees and costs, and injunctive or declaratory relief.

21 The bill does not apply to: opinions, predictions, advocacy,
22 or commentary; disclosed internal campaign surveys; informal or
23 nonscientific surveys clearly labeled as such; or good-faith
24 methodological disagreements. A clear and conspicuous disclosure
25 that polling data is informal, advocacy-based, hypothetical, or
26 aligned with a campaign constitutes a complete defense.