

## CHAPTER 408—S.F.No. 1839

*An act relating to elections; recodifying and clarifying the laws on election contests; amending Minnesota Statutes 1984, sections 209.01; 209.02; 209.03; 209.05; 209.06; 209.07; 209.09; 209.10; and 209.12; proposing coding for new law in Minnesota Statutes, chapter 209; repealing Minnesota Statutes 1984, sections 209.02, subdivisions 2, 3, 4, 4a, 5, 6, 7, and 8; 209.04; and 209.11.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1984, section 209.01, is amended to read:

209.01 DEFINITIONS.

Subdivision 1. IN GENERAL. The words used in this chapter have the meanings prescribed to them definitions in chapter 200 apply to this chapter.

Subd. 2. STATEWIDE OFFICE. For purposes of this chapter "statewide office" means the office of governor, lieutenant governor, attorney general, state auditor, state treasurer, secretary of state, chief justice or associate justice of the supreme court, judge of the court of appeals, United States senator, or presidential elector.

Sec. 2. Minnesota Statutes 1984, section 209.02, is amended to read:

209.02 ~~ELECTION CONTESTS~~ CONTESTANT; GROUNDS.

Subdivision 1. CONTEST, WHO MAY INSTITUTE, GROUNDS. Any eligible voter, including a candidate, may contest in the manner provided in this chapter: (1) the nomination or election of any person for whom he the voter had the right to vote; ~~who if that person~~ is declared nominated or elected to the senate or the house of representatives of the United States, or to a state statewide, county, legislative, or municipal, or district court office; or (2) the declared result of a constitutional amendment or other question voted upon at an election ~~by proceeding as provided in this chapter.~~ The contest may be brought over an irregularity in the conduct of an election or canvass of votes, over the question of who received the largest number of votes legally cast, or on the grounds of deliberate, serious, and material violations of ~~the provisions of~~ the Minnesota election law.

Sec. 3. [209.021] NOTICE OF CONTEST.

Subdivision 1. MANNER; TIME; CONTENTS. Service of a notice of contest must be made in the same manner as the service of summons in civil actions. The notice of contest must specify the grounds on which the contest will be made. The contestant shall serve notice of the contest on the parties enumerated in this section. Notice must be served and filed within five days after the canvass is completed in the case of a primary or within seven days after the canvass is completed in the case of a general election; except that if a contest is based on a deliberate, serious, and material violation of the election laws

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which was discovered from the statements of receipts and disbursements required to be filed by candidates and committees, the action may be commenced and the notice served and filed within ten days after the filing of the statements in the case of a general election or within five days after the filing of the statements in the case of a primary. If a notice of contest questions only which party received the highest number of votes legally cast at the election, a contestee who loses may serve and file a notice of contest on any other ground during the three days following expiration of the time for appealing the decision on the vote count.

Subd. 2. NOTICE FILED WITH COURT. If the contest relates to a nomination or election for statewide office, the contestant shall file the notice of contest with the district court clerk in Ramsey county. For contests relating to any other office, the contestant shall file the notice of contest with the district court clerk in the county where the contestee resides.

If the contest relates to a constitutional amendment or other question voted on statewide, the contestant shall file the notice of contest with the district court clerk in Ramsey county. If the contest relates to any other question, the contestant shall file the notice of contest with the district court clerk for the county or any one of the counties where the question appeared on the ballot.

Subd. 3. NOTICE SERVED ON PARTIES. In all contests relating to the nomination or election of a candidate, the notice of contest must be served on the candidate who is the contestee, a copy of the notice must be sent to the contestee's last known address by certified mail, and a copy must be furnished to the official authorized to issue the certificate of election. If personal or substituted service on the contestee cannot be made, an affidavit of the attempt by the person attempting to make service and the affidavit of the person who sent a copy of the notice to the contestee by certified mail is sufficient to confer jurisdiction upon the court to decide the contest.

If the contest relates to a constitutional amendment or other question voted on statewide or voted on in more than one county, notice of contest must be served on the secretary of state, who is the contestee. If a contest relates to a question voted on within only one county or one municipality, a copy of the notice of contest must be served on the county auditor or municipal clerk, respectively, who is the contestee. If the contest relates to an irregularity in the conduct of an election or canvass of votes, a copy of the notice of contest must be served on the county auditor of the county where the irregularity is said to have occurred.

Sec. 4. Minnesota Statutes 1984, section 209.03, is amended to read:

209.03 ~~CONTESTEE, CONTESTEE'S ANSWER.~~

Subdivision 1. CONTEST OF VOTE COUNT. ~~When the~~ If a notice of contest questions only which of the parties to the contest received the highest number of votes legally cast at the election, the contestee need not file an answer, unless the contestee desires to raise issues not specified in the notice of contest.

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Subd. 2. OTHER CONTESTS. For all other election contests ~~or in any contest in which the contestee desires to offer testimony on points not specified in contestant's notice; he shall file and serve~~ the contestee's answer to the notice of contest must be filed and served on the contestant ~~an answer to the notice of contest.~~ The answer ~~shall~~ must so far as practicable, conform to the rules for pleading in civil actions. If the contest relates to a primary, service of the answer ~~shall~~ must be made within the time fixed by the court, but ~~not exceeding no more than~~ no more than five days after service of ~~contestant's~~ the notice upon him; of contest. If the contest relates to a general election, service of the answer ~~shall~~ must be made within seven days after service of ~~contestant's~~ the notice upon him of contest. Service of ~~The~~ the contestee's answer ~~shall~~ must be made ~~served~~ in the same manner as ~~provided for service of an~~ the answer in a ~~civil actions~~ civil action or in ~~such~~ the manner as the court may ~~by order direct~~ order. Any other notices ~~shall~~ must be served in ~~such~~ the manner and within ~~such~~ the times as the court may ~~by order direct~~.

#### Sec. 5. [209.045] VENUE FOR STATEWIDE CONTESTS.

If a notice of contest is filed in the district court of Ramsey county regarding a statewide office or constitutional amendment or other question voted on statewide, the district court clerk, within three days of receipt of the notice of contest, shall submit one copy of it and of the answer, if any, to the chief justice of the supreme court by certified mail. The case must be heard and determined in Ramsey county by three judges assigned by the chief justice of the supreme court. If there is a division of opinion, the majority opinion prevails.

Sec. 6. Minnesota Statutes 1984, section 209.05, is amended to read:

#### 209.05 ~~CONTEST, GUARD OF~~ GUARDING THE BALLOTS.

In any election, upon demand made of the custodian of the ballots and upon notice to the ~~opposing party~~ candidate's opponent, a candidate may keep a continuous visual guard over the ballots ~~at all hours of the day and night may be kept by a candidate~~ until the expiration of the time for instituting contests; ~~and.~~ In case of a contest ~~it,~~ the contestant or contestee may ~~be kept by any party thereto~~ keep a visual guard over the ballots. The guard may be maintained either by the candidate ~~or other party himself,~~ contestant, or contestee, or by each of their duly authorized agents, not exceeding two at a time for each party ~~at any one time to the contest.~~ In event of such demand If a candidate, contestant, or contestee seeks to guard the ballots, the custodian of the ballots shall appoint some suitable person as to guard over the ballots during such hours as he shall deem necessary in order to prevent leaving the same so they are not in the sole custody of the candidate or other party, contestant, contestee, or the their agents of one of them.

Sec. 7. Minnesota Statutes 1984, section 209.06, is amended read:

#### 209.06 ~~CONTEST, RECOUNT~~ INSPECTION OF BALLOTS.

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Subdivision 1. **RECOUNT, APPOINTMENT OF INSPECTORS.** After a contest has been instituted, either party may have the ballots inspected before preparing for trial. The party applying for such requesting an inspection shall file with the clerk of district court in which district court where the contest is brought a verified petition, stating that he the case cannot properly prepare his ease be prepared for trial without an inspection of such the ballots and designating the precincts in which he desires to have ballots inspected, and thereupon an inspection is desired. A judge of the court wherein in which the trial of such ease contest is pending shall then appoint as many sets of three persons inspectors for a legislative, county, municipal, district court or other office not specifically provided for herein; contest of any office or for any question voted upon at a county or municipal election; as are needed to count and inspect the ballots expeditiously. One inspector must be selected by each of the parties to the contest and a third must be chosen by those two by whom such inspection shall be made inspectors. In ease If either party neglects or refuses to name an inspector, he shall be named by such the judge shall appoint the inspector. The compensation of inspectors shall be is the same as for referees, unless otherwise stipulated.

Subd. 2. **RECOUNT, BOND, TAXING OF COSTS.** The party applying for the inspection shall file with the clerk of district court a bond in the sum of \$250 if the contest be within is in a single county; otherwise, In other cases the bond shall be in a sum to be fixed set by the court in its discretion, with such sureties as shall be approved by the court, and conditioned that he the party seeking inspection will pay the administrative costs and expenses of such in ease he fails to maintain his the inspection if that party loses the contest. If the contestee succeeds, costs of the contest shall be taxed against the contestant. If the contestant succeeds, costs of the contest shall be taxed against the contestee, except that if the contestee loses because of an error in the counting of ballots or canvass of the returns or by reason of any other irregularity in the election procedure, costs shall be taxed, in the discretion of the judge, upon those municipalities responsible for errors which resulted in the reversal of the prior results of the election.

Subd. 3. **RECOUNT OF BALLOTS, STATEWIDE ELECTION.** If the contest relates to a state office or to the declared result of a constitutional amendment or other question voted upon at a statewide election, the party applying for the inspection shall designate the precincts in the counties in which he desires the inspection to be made; and the court shall order the appointment of as many sets of three inspectors as may be necessary to expeditiously count and inspect the ballots, and the ballots shall be inspected in the office of the county auditor who is the legal custodian of the ballots in question. The inspectors in a state contest shall be selected in the manner provided in subdivision 1.

Subd. 4. **RECOUNT OF BALLOTS, REPORT OF INSPECTORS.** The An inspection shall must be made in the office and in the presence of the legal custodian of the ballots; and. The inspectors shall recanvass the votes cast for

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the parties to the contest or the question in issue in accordance with the rules for counting ballots ~~provided~~ in the Minnesota election law. They shall make a written report of ~~such canvass and report~~ the inspection indicating the number of votes cast for each of the parties to the contest for candidate or each side of the question in each precinct ~~that is recounted~~ where the ballots were inspected and ~~report~~ indicating any disputed ballots upon which the inspectors cannot agree.

Sec. 8. [209.065] PLEADINGS; PROCEDURE.

The notice of contest and any answer are the pleadings in the case and may be amended in the discretion of the court. The contest proceedings must be brought on for trial by either the contestant or contestee as soon as practicable within 20 days after the filing of the notice of contest. The court shall proceed in the manner provided for the trial of civil actions so far as practicable.

Sec. 9. Minnesota Statutes 1984, section 209.07, is amended to read:

209.07 RESULTS OF CONTEST; DETERMINATION.

Subdivision 1. GENERALLY. Upon a determination of the contest by If a nomination is contested, the court shall decide which candidate, if any, was nominated and is entitled to have his or her name printed on the official ballots. When the court decides an election contest for any office other than state senator or state representative, after and the time for appeal has expired or, in case of an appeal, after the final judicial determination of the contest, if the contestant succeeds in the contest, the court may invalidate and revoke any election certificate which has been issued to the contestee; and, If the contest involved an error in the counting of ballots, the official authorized to issue the certificate of election shall issue the certificate to the person entitled thereto; except that to it, but if a contestant succeeds in a contest where there is no question as to which of the candidates received the highest number of votes cast at the election, the contestant shall is not, by reason of the disqualification of the contestee, be entitled to the certificate of election.

Subd. 2. DEFECTIVE BALLOTS. In a contested election, if the court decides that a serious and material defect in the ballots used changed the outcome of the election for the contested office, the election must be declared invalid for that office.

Subd. 3. COSTS OF CONTEST. If the contestee succeeds, costs of the contest must be paid by the contestant. If the contestant succeeds, costs of the contest must be paid by the contestee; except that if the contestee loses because of an error in the counting of ballots or canvass of the returns or because of any other irregularity in the election procedure, costs must be paid, in the discretion of the judge, by the election jurisdictions responsible for errors which resulted in the reversal of the prior results of the election.

Sec. 10. Minnesota Statutes 1984, section 209.09, is amended to read:

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## 209.09 APPEALS.

When an appeal is taken from If the determination decision of the district court in any contest instituted under this chapter is appealed, the party appealing appellant shall file in the district court a bond in a sum, not less than of \$500; and with such sureties, as shall be approved by the judge, conditioned for the payment of all costs incurred by the respondent in ease if appellant fails on his appeal. The notice of appeal shall must be served and filed in the court of appeals in the case of a general election no later than ten days in ease of a general election and, in the case of a primary, no later than five days in ease of a primary after the entry of the determination of the district court court's decision in the contest. The return of the record on appeal shall must be made, certified, and filed in the court of appeals or, in the ease of a contest relating to the office of state representative or senator, in the supreme court as soon as practicable and in any event within 15 days after service of notice of appeal. The appeal may be brought on for hearing in the court at any time when it is in session, upon such notice from either party, as the court may determine. The notice may be served during term time or in vacation determines; and it may be heard and determined summarily by the court. The appeal from a determination of an election contest relating to the office of state senator or representative shall take precedence over all other business on the supreme court docket, and shall be disposed of with all convenient dispatch. A copy of the decision shall be forwarded to the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

Sec. 11. Minnesota Statutes 1984, section 209.10, is amended to read:

209.10 CONTEST OF STATE LEGISLATIVE OFFICE.

Subdivision 1. NOTICE IN LEGISLATIVE CONTEST; DUTIES OF COURT; TRANSMITTAL TO PROPER HOUSE. When the contest relates to the office of state senator or representative, the judge trying the proceedings shall determine the contest, issue appropriate orders, and make written findings of fact and conclusions of law. Unless appealed to the supreme court, the judge shall, by the first day of the legislative session, transmit the findings, conclusions and orders to the chief clerk of the house of representatives or the secretary of the senate, as appropriate, together with the files and records of the proceedings. The provisions of this chapter shall not be construed as limiting the constitutional power of the legislature to be the judge of the election returns and eligibility of its own members. In a legislative contest, the district court clerk, within three days of receipt of the notice of contest, shall submit one copy of it to the chief justice of the supreme court by certified mail. The clerk shall also submit one copy of the answer, if any, to the chief justice by certified mail within three days of receipt.

Subd. 2. JUDGE SELECTION. In cases where an unfair campaign practice is alleged, within five days of receipt of a notice of contest, the chief justice shall submit to the parties a list of all the district judges in the state, except those involved in a trial that would interfere with serving as a judge in the election

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contest and those whose health precludes serving as judge in the election contest. Within two days after receiving the list of judges the parties shall meet together and, by alternating strikes they shall remove the names of all judges until only one remains. If no unfair campaign practice is alleged, the parties shall follow the same procedure using only the names of judges of the judicial district or districts covering the area served by the contested office. If the contestant does not proceed within the time provided for in this section, the action must be dismissed and the judge shall transmit a copy of the order for dismissal to the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

Subd. 3. DUTIES OF COURT. Within 15 days after notice of contest has been filed, the judge shall convene the proceeding at an appropriate place within the county, or, if the district includes all or portions of more than one county, a county within the legislative district, and hear testimony of the parties under the ordinary rules of evidence for civil actions. The judge shall decide the contest, issue appropriate orders, and make written findings of fact and conclusions of law. Unless the matter is appealed to the supreme court, the judge, by the first day of the legislative session, shall transmit the findings, conclusions, orders, and records of the proceeding to the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

Subd. 4. APPEAL. The judge's decision may be appealed to the supreme court no later than ten days after its entry in the case of a general election contest or five days after its entry in the case of a primary contest. The record on appeal must be made, certified, and filed in the supreme court within 15 days after service of notice of appeal. The appellant shall file in the district court a bond of \$500 for the payment of respondent's costs if appellant fails on his appeal. The appeal from an election contest relating to the office of state senator or representative takes precedence over all other matters before the supreme court. A copy of the decision must be forwarded to the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

Subd. 5. LEGISLATIVE CONTEST, HEARING, PROCEDURE. In hearing ~~the~~ a contest, the house or senate shall proceed as follows:

(a) At the time appointed, the parties shall be called, and, if they appear, their appearance shall be recorded;

(b) If the presiding officer ~~be~~ is a party, a speaker pro tem shall must be elected to preside;

(c) ~~The contestant's~~ contestant shall submit evidence ~~shall be submitted~~ first, followed by ~~that of~~ the contestee, and the contestant shall open the argument; and close the ~~same~~ argument after the contestee has been heard;

(d) The vote upon the contest shall must be viva voce, any member may offer reasons for the vote he or she intends to give, and a majority of the votes given shall ~~decide;~~ decides the issue. No party to the contest shall may vote upon any question ~~relative~~ relating thereto; ~~and.~~

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(e) The clerk or secretary shall enter the proceedings in the journal.

Subd. 6. NOT A LIMITATION. This chapter does not limit the constitutional power of the house of representatives and the senate to judge the election returns and eligibility of their own members.

Sec. 12. Minnesota Statutes 1984, section 209.12, is amended to read:

~~209.12 FEDERAL LEGISLATIVE OFFICES~~ CONGRESSIONAL OFFICE.

When ~~the a~~ contest relates to the office of senator or a member of the house of representatives of the United States, the only question to be ~~tried~~ decided by the court, ~~notwithstanding any other provision of law, shall be the question as to~~ is which of the parties ~~party~~ to the contest received the highest number of votes legally cast at the election; and ~~as to who is therefore~~ entitled to receive the certificate of election. The judge trying the proceedings shall make findings of fact and conclusions of law upon ~~the that~~ question ~~so~~ tried. ~~Further Evidence upon the on any other~~ points specified in the ~~notices~~ notice of contest, including but not limited to the question ~~as to~~ of the right of any person to nomination or office on the ground of deliberate, serious, and material violation of the provisions of the Minnesota election law, ~~shall must~~ must be taken and preserved by the judge trying the contest, or ~~under his direction~~ by some person appointed by him for that purpose; ~~but the judge shall make no findings or conclusion thereon on those points.~~

After the time for appeal has expired, or in case of an appeal, after the final judicial determination of the contest, upon application of either ~~of the parties~~ party to the contest, the clerk of the district court shall, ~~without unnecessary delay, promptly~~ promptly certify and ~~carefully seal and immediately forward all the files and records of the proceedings, with all the evidence taken, by mail or by express, addressed to the presiding officer of the senate or of the house of representatives as the case may be of the United States, Washington, District of Columbia; and shall also.~~ The clerk shall endorse upon on the transmittal envelope or container in which the same are transmitted the name of the case in which the same were taken, together with and the name of the party in whose behalf the same proceedings were taken held, and shall subscribe such sign the endorsement.

Sec. 13. **REPEALER.**

Minnesota Statutes 1984, sections 209.02, subdivisions 2, 3, 4, 4a, 5, 6, 7, and 8; 209.04; and 209.11, are repealed.

Approved March 24, 1986

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