

## CHAPTER 208

## ELECTION CONTESTS

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**208.01 WHO MAY INSTITUTE CONTEST.** Any 25 voters of the state, or of any political subdivision thereof, may contest the right of any person to nomination, position, or office for which these voters had the right to vote, on the ground of deliberate, serious, and material violation of the provisions of chapters 200 to 212 or of any other provisions of law relating to nominations and elections. Any defeated candidate for a nomination, position, or office may make the contest. The proceeding shall be commenced by petition filed in the district court of the county in which the candidate whose election is contested resides, and the contest shall be carried on according to law.

In case of contests over nomination, the court shall pronounce whether the incumbent or contestant was duly nominated, and the person so declared nominated shall have his name printed on the official ballots.

[1939 c. 345 part 7 c. 1 s. 1] (601-7(1))

**208.02 WATCHERS FOR BALLOT BOXES.** In counties having a population of 200,000 or more, and in all cities of the first class any candidate for office at any election, upon demand made upon the custodian of the ballots, shall be entitled, either by himself, or his duly authorized agent, or agents, not exceeding two at any one time, to maintain continuous, visual watch over these boxes at all hours of the day and night until the expiration of the time for instituting contests; and, in case of the instituting of contest or contests, either party to such contest, upon demand upon the custodian of the ballots and upon notice to the opposing party to such contest, shall be entitled by himself, or his duly authorized agent or agents, not exceeding two at any one time, to maintain an actual, visual watch over such ballot boxes at all hours of the day and night. In event of such demand, either by candidate or party to a contest, the custodian of such ballots shall be authorized to appoint some suitable person as watchman over such ballot boxes during such hours as he shall deem necessary, in order to prevent leaving the same in the sole custody of such candidate or contestant, or his agent or agents.

[1939 c. 345 part 7 c. 1 s. 2] (601-7(1)a)

**208.03 CANDIDATE MAY FILE CONTEST; NOTICE.** Any candidate for the office of senator or representative for any legislative district may contest the validity of the election of any person declared elected to such office, by filing with the clerk of the district court of the county of the residence of the contestee, within ten days after the canvass is completed, a written notice of contest, specifying the points upon which the contest will be made.

The notice shall be served upon the contestee, within five days thereafter, in the manner provided for the service of a summons in a civil action, or within the time and in the manner prescribed for serving notices in section 208.07. The contestee may, within 15 days after the service of such notice, serve upon the contestant a notice specifying additional points upon which he desires to offer evidence upon the right to hold such office.

[1939 c. 345 part 7 c. 1 s. 3] (601-7(1)b)

**208.04 INSPECTION OF BALLOTS.** An inspection of ballots may be had upon the application of either party to the contest, in accordance with section 208.08, which shall apply to contests under this section insofar as section 208.08 may be applicable, including the provision of furnishing a bond for the sum of \$250.00. Three inspectors of ballots shall be appointed, as provided for in section 208.08, in the case of a contest for a county office. The inspectors shall recanvass the votes and ballots cast for the parties to the contest in accordance with law and with

section 206.50. They shall make a written report of such recount and recanvass, and report the number of votes cast for each of the parties to the contest in each voting district and report any disputed ballots upon which the inspectors cannot agree.

[1939 c. 345 part 7 c. 1 s. 4] (601-7(1)c)

**208.05 TRIAL.** The contest proceedings shall be brought on for trial, as provided in section 208.07, within 30 days after the filing of the notice of contest. The only questions to be tried by the court shall be as to which of the parties to the contest received the highest number of votes legally cast at the election, and as to who is entitled to receive the certificate of election. The judge trying the proceedings shall make findings upon the questions so tried. Further evidence upon the points specified in the notices shall be taken and preserved by the judge trying the contest, or under his direction by some person appointed by him for that purpose.

When a contest is instituted under this chapter, the county auditor and secretary of state shall refrain from issuing a certificate of election until the final determination of the question as to which of the parties is entitled to the certificate of election. He shall then issue the certificate to the one so found to be entitled to the certificate.

Either party may appeal to the supreme court from the determination of the district court, in accordance with the provisions of section 208.09, within five days after notice of filing the decision.

Upon application of either of the parties to the contest, the clerk of the district court shall transmit all the files and records of the proceedings with all the evidence taken to the presiding officer of the house by which the contest is to be tried.

[1939 c. 345 part 7 c. 1 s. 5] (601-7(1)d)

**208.06 CONDUCT OF CONTEST.** In hearing the contest, the house shall proceed as follows:

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

(2) If the presiding officer be a party, a speaker pro tem shall be elected to preside;

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

(4) The vote upon the contest shall be viva voce, any member may offer reasons for the vote he intends to give, and a majority of the votes given shall decide; but no party to the contest shall vote upon any question relative thereto; and

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

[1939 c. 345 part 7 c. 1 s. 6] (601-7(1)e)

**208.07 VOTER MAY CONTEST ELECTION.** Any voter may contest the election of any person for or against whom he had the right to vote, who is declared elected to a state, county, or municipal office, or the declared result upon a constitutional amendment or other question submitted to popular vote, by proceeding as follows: He shall file with the clerk of the district court of the county of his residence, within ten days after the canvass is completed a written notice of contest, specifying the points upon which the contest will be made, and cause a copy thereof to be served upon the contestee when the contest relates to the election of an officer, upon the secretary of state when it is a matter submitted to popular vote which affects the entire state, or any subdivision thereof larger than a county, upon the auditor when it affects a single county, and in all cases upon the municipality affected. In case of a contest as to a state office, the notice may be filed in any district court of the state, but the place of trial may be changed as in civil actions. When the contestee desires to offer testimony on points not specified in contestant's notice, he shall file and serve on the contestant notice thereof specifying such additional points. Such notices shall be treated as the pleadings in the case, and may be amended in the discretion of the court. All notices provided for herein shall be served in such manner and within such times as the court may by order direct, and the testimony shall be taken, and the matter tried and determined, in the same manner as such actions are tried by the court, at a general or special term, if any, occurring within 30 days after such canvass. When no term is already fixed, the judge shall seasonably appoint a special term to be held within such time.

[1939 c. 345 part 7 c. 1 s. 7] (601-7(1)f)

**208.08 INSPECTION OF BALLOTS.** After a contest has been instituted, either party may have the ballots inspected before preparing for trial. The party applying

for such inspection shall file with the clerk a verified petition, stating that he cannot properly prepare his case for trial without an inspection of such ballots, and thereupon the judge of the court shall appoint three persons, if for a county or municipal office, or other question submitted to popular vote in any county or municipality, one selected by each of the parties and a third by those two by whom such inspection shall be made. If the contest relates to a state office, or to the declared result upon a constitutional amendment or other question submitted to popular vote throughout the state a judge of the court shall issue an order directing that all ballots pertaining to such contest be forthwith transmitted to the secretary of state by the several county auditors of the state. Such ballots, together with the sealed envelopes in which they were returned by the judges, shall be properly boxed and sealed before shipment. They shall be shipped by express and it shall be the duty of the transportation company having in charge the transportation of such ballots to properly safeguard the same from the time they are received until they are delivered to the secretary of state. The order may be served upon the several county auditors by registered mail. Such order may be modified as to the most populous counties and provision made for inspecting the ballots of such counties at the county-seats thereof. Before such order is issued the applicant therefor shall deposit with the secretary of state a sum of money sufficient to pay all expenses connected with the transportation of such ballots. No compensation shall be allowed the county auditor for his services in preparing such ballots for shipment. In state contests, the judge of the court shall appoint as many sets of three persons as may be necessary to expeditiously count and inspect the ballots in the office of the secretary of state, or elsewhere. Such inspectors shall be selected in the same manner as for county or municipal contests. Contests for district judge, or other offices not specifically provided for herein, shall be conducted under this section, the procedure therefor to be fixed by the court. Inspection of ballots shall be conducted in the presence of the legal custodian of the ballots and the party applying therefor shall file with the clerk a bond in the sum of \$250.00, if the contest be within a single county; otherwise such bonds shall be in a sum to be fixed by the court in its discretion, with two sureties, and conditioned that he will pay the costs and expenses of such in case he fails to maintain his contest. If the contestant prevails in his contest the cost shall be taxed against the contestee. In case either party neglects or refuses to name an inspector, he shall be named by the judge. The compensation of inspectors shall be the same as for referees, unless otherwise stipulated. Any court of proper jurisdiction may order the return of any ballots to the county from which they were sent, after inspection, if necessary to be used in any other contest proceeding. The secretary of state shall preserve any ballots in his possession until the next general election, unless otherwise directed by order of court.

[1939 c. 345 part 7 c. 1 s. 8] (601-7(1)g)

**208.09 APPEAL; BOND.** When an appeal is taken to the supreme court from the determination of the district court in any contest instituted under section 208.07, the party appealing shall file in the district court a bond in such sum, not less than \$500.00, and with such sureties, as shall be approved by the judge, conditioned for the payment of all costs incurred by the respondent in case appellant fails on his appeal. The return of such appeal shall be made, certified, and filed in the supreme court 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 ten days' notice from either party, which may be served during term time or in vacation; and it may be heard and determined summarily by the court.

[1939 c. 345 part 7 c. 1 s. 9] (601-7(1)h)

**208.10 DETERMINATION OF CONTEST.** When in any contested election the tribunal hearing the contest shall determine that the ballots used in any district by reason of the omission, addition, misplacing, misspelling or misstatement of one or more titles of offices, names of candidates, or parties or policies represented by them, were so defective, as to the office in contest, as to be calculated to mislead the voters in regard to any of the candidates for the office, and that the defective condition of the ballots may have affected the result of the entire election for such office, the election shall be declared invalid as to that office.

[1939 c. 345 part 7 c. 1 s. 10] (601-7(1)i)