

CHAPTER 211B

FAIR CAMPAIGN PRACTICES

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211B.01 DEFINITIONS.

Subdivision 1. **Application.** The definitions in chapter 200 and this section apply to this chapter.

Subd. 2. **Campaign material.** "Campaign material" means any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media.

[See Note.]

Subd. 3. **Candidate.** "Candidate" means an individual who seeks nomination or election to a federal, statewide, legislative, judicial, or local office including special districts, school districts, towns, home rule charter and statutory cities, and counties, except candidates for president and vice-president of the United States.

Subd. 4. **Committee.** "Committee" means two or more persons acting together or a corporation or association acting to influence the nomination, election, or defeat of a candidate or to promote or defeat a ballot question. Promoting or defeating a ballot question includes efforts to qualify or prevent a proposition from qualifying for placement on the ballot.

Subd. 5. **Disbursement.** "Disbursement" means an act through which money, property, office, or position or other thing of value is directly or indirectly promised, paid, spent, contributed, or lent, and any money, property, office, or position or other thing of value so

promised or transferred.

Subd. 6. **Political purposes.** An act is done for "political purposes" when the act is intended or done to influence, directly or indirectly, voting at a primary or other election. This does not include news items or editorial comments published or broadcast by the news media.

History: 1988 c 578 art 3 s 1; 2004 c 293 art 3 s 1

NOTE: In subdivision 2 the definition of "campaign material" was found unconstitutionally vague in *Minnesota Citizens Concerned for Life, Inc. v. Kelley*, 291 F.Supp.2d 1052 (D.Minn. 2003), affirmed 427 F.3d 1106 (8th Cir. 2005).

211B.02 FALSE CLAIM OF SUPPORT.

A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party or party unit or of an organization. A person or candidate may not state in written campaign material that the candidate or ballot question has the support or endorsement of an individual without first getting written permission from the individual to do so.

History: 1988 c 578 art 3 s 2

211B.03 USE OF THE TERM REELECT.

A person or candidate may not, in the event of redistricting, use the term "reelect" in a campaign for elective office unless the candidate is the incumbent of that office and the office represents any part of the new district.

History: 1988 c 578 art 3 s 3

211B.04 CAMPAIGN LITERATURE MUST INCLUDE DISCLAIMER.

(a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the committee,(address)" for material prepared and paid for by a principal campaign committee, or "Prepared and paid for by the committee,(address), in support of(insert name of candidate or ballot question)" for material prepared and paid for by a person or committee other than a principal campaign committee.

(c) In the case of broadcast media, the required form of disclaimer is: "Paid for by the committee."

(d) Campaign material that is not circulated on behalf of a particular candidate or ballot question must also include in the disclaimer either that it is "in opposition to....(insert name of candidate or ballot question....)"; or that "this publication is not circulated on behalf of any candidate or ballot question."

(e) This section does not apply to objects stating only the candidate's name and the office sought, fund-raising tickets, or personal letters that are clearly being sent by the candidate.

(f) This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$2,000 in the aggregate to

produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates.

(g) This section does not modify or repeal section 211B.06.

History: *1988 c 578 art 3 s 4; 1991 c 227 s 24; 1998 c 376 s 2; 2004 c 293 art 3 s 2; 2010 c 397 s 15*

NOTE: This section was found unconstitutional in *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. Ct. App. 2006), and *Minnesota Citizens Concerned for Life, Inc. v. Kelley*, 219 F.Supp.2d 1052 (D.Minn. 2003), but see Laws 2010, chapter 397, section 15.

211B.045 NONCOMMERCIAL SIGNS EXEMPTION.

In any municipality, whether or not the municipality has an ordinance that regulates the size or number of noncommercial signs, all noncommercial signs of any size may be posted in any number from 46 days before the state primary in a state general election year until ten days following the state general election.

History: *1990 c 585 s 30; 2004 c 142 s 1; 2010 c 184 s 42*

211B.05 PAID ADVERTISEMENTS IN NEWS.

Subdivision 1. **Acceptance of paid advertisements.** A newspaper, periodical, or magazine may not intentionally accept for insertion in the newspaper, magazine, or periodical a political advertisement unless the words "PAID ADVERTISEMENT," and the disclaimer required under section 211B.04 are included at the beginning or end of the advertisement. The disclaimer must be in a legible text size and font. A radio station, television station, or cable system may not accept for broadcast a political advertisement unless the words "PAID ADVERTISEMENT" are included at the beginning or end of the advertisement.

Subd. 2. **Advertising rates.** Rates charged for advertising to support or oppose a candidate or ballot question must be the same as the charges made for any other political candidate and may be no greater than charges made for any other comparable purpose or use according to the seller's rate schedule.

Subd. 3. **Compensation prohibited, except for paid advertisement.** An owner, publisher, editor, reporter, agent, broadcaster, or employee of a newspaper, periodical, magazine, radio or television broadcast station, or cable system may not directly or indirectly solicit, receive, or accept a payment, promise, or compensation, nor may a person pay or promise to pay or in any manner compensate an owner, publisher, editor, reporter, agent, broadcaster, or employee directly or indirectly for influencing or attempting to influence voting at an election or primary through printed material in the newspaper or periodical, or radio, television, or cable broadcast, except as a "PAID ADVERTISEMENT" as provided in this section.

Subd. 4. **Unpaid material identification.** Unpaid material published in a newspaper, magazine, or other publication that is: (1) in unique typeset or otherwise differentiated from other unpaid material, (2) designed to influence or attempt to influence the voting at any election or the passage or defeat of legislation, and (3) not placed on the editorial page must be clearly identified as an editorial opinion.

History: *1988 c 578 art 3 s 5; 2001 c 143 s 1*

211B.06 FALSE POLITICAL AND CAMPAIGN MATERIAL; PENALTY; EXCEPTIONS.

Subdivision 1. **Gross misdemeanor.** A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

A person is guilty of a misdemeanor who intentionally participates in the drafting of a letter to the editor with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat any candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

Subd. 2. **Exception.** Subdivision 1 does not apply to any person or organization whose sole act is, in the normal course of their business, the printing, manufacturing, or dissemination of the false information.

History: 1988 c 578 art 3 s 6; 1998 c 376 s 3

211B.07 UNDUE INFLUENCE ON VOTERS PROHIBITED.

A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote for or against a candidate or ballot question. Abduction, duress, or fraud may not be used to obstruct or prevent the free exercise of the right to vote of a voter at a primary or election, or compel a voter to vote at a primary or election. Violation of this section is a gross misdemeanor.

History: 1988 c 578 art 3 s 7

211B.08 SOLICITATION OF CONTRIBUTIONS PROHIBITED.

A religious, charitable, or educational organization may not request a candidate or committee to contribute to the organization, to subscribe for the support of a club or organization, to buy tickets to entertainment, or to pay for space in a publication. This section does not apply to:

- (1) the solicitation of a business advertisement in periodicals in which the candidate was a regular contributor, before candidacy;
- (2) ordinary business advertisements;
- (3) regular payments to a religious, charitable, or educational organization, of which the candidate was a member, or to which the candidate was a contributor for more than six months before candidacy; or
- (4) ordinary contributions at church services.

History: 1988 c 578 art 3 s 8

NOTE: This section was found unconstitutional in *Minnesota Citizens Concerned for Life, Inc. v. Kelley*, 427 F.3d 1106 (8th Cir. 2005).

211B.09 PROHIBITED PUBLIC EMPLOYEE ACTIVITIES.

An employee or official of the state or of a political subdivision may not use official authority or influence to compel a person to apply for membership in or become a member of a political organization, to pay or promise to pay a political contribution, or to take part in political activity. A political subdivision may not impose or enforce additional limitations on the political activities of its employees.

History: 1988 c 578 art 3 s 9

211B.10 INDUCING OR REFRAINING CANDIDACY; TIME OFF FOR PUBLIC OFFICE MEETINGS.

Subdivision 1. **Inducing or refraining from candidacy.** A person may not reward or promise to reward another in any manner to induce the person to be or refrain from or cease being a candidate. A person may not solicit or receive a payment, promise, or reward from another for this purpose.

Subd. 2. **Time off for public office meetings.** A person elected to a public office must be permitted time off from regular employment to attend meetings required by reason of the public office. The time off may be without pay, with pay, or made up with other hours, as agreed between the employee and employer. When an employee takes time off without pay, the employer shall make an effort to allow the employee to make up the time with other hours when the employee is available. No retaliatory action may be taken by the employer for absences to attend meetings necessitated by reason of the employee's public office.

History: 1988 c 578 art 3 s 10

211B.11 ELECTION DAY PROHIBITIONS.

Subdivision 1. **Soliciting near polling places.** A person may not display campaign material, post signs, ask, solicit, or in any manner try to induce or persuade a voter within a polling place or within 100 feet of the building in which a polling place is situated, or anywhere on the public property on which a polling place is situated, on primary or election day to vote for or refrain from voting for a candidate or ballot question. A person may not provide political badges, political buttons, or other political insignia to be worn at or about the polling place on the day of a primary or election. A political badge, political button, or other political insignia may not be worn at or about the polling place on primary or election day. This section applies to areas established by the county auditor or municipal clerk for absentee voting as provided in chapter 203B.

The secretary of state, county auditor, municipal clerk, or school district clerk may provide stickers which contain the words "I VOTED" and nothing more. Election judges may offer a sticker of this type to each voter who has signed the polling place roster.

Subd. 2. [Repealed, 1997 c 147 s 79]

Subd. 3. **Transportation of voters to polling place; penalty.** A person transporting a voter to or from the polling place may not ask, solicit, or in any manner try to induce or persuade a voter on primary or election day to vote or refrain from voting for a candidate or ballot question.

Subd. 4. **Penalty.** Violation of this section is a petty misdemeanor.

History: 1988 c 578 art 3 s 11; 1989 c 291 art 1 s 32; 1993 c 223 s 25

211B.12 LEGAL EXPENDITURES.

Use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement as defined in section 10A.01, subdivision 26. The following are permitted expenditures when made for political purposes:

- (1) salaries, wages, and fees;
- (2) communications, mailing, transportation, and travel;
- (3) campaign advertising;
- (4) printing;
- (5) office and other space and necessary equipment, furnishings, and incidental supplies;
- (6) charitable contributions of not more than \$100 to any charity organized under section 501(c)(3) of the Internal Revenue Code annually, except that the amount contributed by a principal campaign committee or from the campaign fund of a candidate for political subdivision office that dissolves within one year after the contribution is made is not limited by this clause; and
- (7) other expenses, not included in clauses (1) to (6), that are reasonably related to the conduct of election campaigns. In addition, expenditures made for the purpose of providing information to constituents, whether or not related to the conduct of an election, are permitted expenses. Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use.

History: 1988 c 578 art 3 s 12; 1993 c 318 art 2 s 48; 2008 c 295 s 23; 2010 c 327 s 27

211B.13 BRIBERY, TREATING, AND SOLICITATION.

Subdivision 1. **Bribery, advancing money, and treating prohibited.** A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election, is guilty of a felony. This section does not prevent a candidate from stating publicly preference for or support of another candidate to be voted for at the same primary or election. Refreshments of food or nonalcoholic beverages having a value up to \$5 consumed on the premises at a private gathering or public meeting are not prohibited under this section.

Subd. 2. **Certain solicitations prohibited.** A person may not knowingly solicit, receive, or accept any money, property, or other thing of monetary value, or a promise or pledge of these that is a disbursement prohibited by this section or section 211B.15.

History: 1988 c 578 art 3 s 13; 2005 c 156 art 6 s 63

211B.14 DIGEST OF LAWS.

The secretary of state, with the approval of the attorney general, shall prepare and print an easily understandable digest of this chapter and annotations of it. The digest may include other related laws and annotations at the discretion of the secretary of state.

The secretary of state shall distribute the digest to candidates and committees through the county auditor or otherwise as the secretary of state considers expedient. A copy of the digest and,

if appropriate, a financial reporting form and a certification of filing form must be distributed to each candidate by the filing officer at the time that the candidate's affidavit of candidacy is filed.

History: 1988 c 578 art 3 s 14; 1993 c 223 s 26; 1997 c 147 s 73

211B.15 CORPORATE POLITICAL CONTRIBUTIONS.

Subdivision 1. **Definitions.** For purposes of this section, "corporation" means:

- (1) a corporation organized for profit that does business in this state;
- (2) a nonprofit corporation that carries out activities in this state; or
- (3) a limited liability company formed under chapter 322B, or under similar laws of another state, that does business in this state.

Subd. 2. **Prohibited contributions.** A corporation may not make a contribution or offer or agree to make a contribution directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate but does not include an independent expenditure authorized by subdivision 3.

Subd. 3. **Independent expenditures.** A corporation may not make an expenditure or offer or agree to make an expenditure to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office, unless the expenditure is an independent expenditure. For the purpose of this subdivision, "independent expenditure" has the meaning given in section 10A.01, subdivision 18.

Subd. 4. **Ballot question.** A corporation may make contributions or expenditures to promote or defeat a ballot question, to qualify a question for placement on the ballot unless otherwise prohibited by law, or to express its views on issues of public concern. A corporation may not make a contribution to a candidate for nomination, election, or appointment to a political office or to a committee organized wholly or partly to promote or defeat a candidate.

Subd. 5. **News media.** This section does not prohibit publication or broadcasting of news items or editorial comments by the news media.

Subd. 6. **Penalty for individuals.** An officer, manager, stockholder, member, agent, employee, attorney, or other representative of a corporation acting in behalf of the corporation who violates this section may be fined not more than \$20,000 or be imprisoned for not more than five years, or both.

Subd. 7. **Penalty for corporations.** A corporation convicted of violating this section is subject to a fine not greater than \$40,000. A convicted domestic corporation may be dissolved as well as fined. If a foreign or nonresident corporation is convicted, in addition to being fined, its right to do business in this state may be declared forfeited.

Subd. 7a. **Application of penalties.** No penalty may be imposed for a violation of this section that is subject to a civil penalty under section 10A.121.

Subd. 8. **Permitted activity; political party.** It is not a violation of this section for a political party, as defined in section 200.02, subdivision 7, to form a nonprofit corporation for the sole purpose of holding real property to be used exclusively as the party's headquarters.

Subd. 9. **Media projects.** It is not a violation of this section for a corporation to contribute to or conduct public media projects to encourage individuals to attend precinct caucuses, register, or vote if the projects are not controlled by or operated for the advantage of a candidate, political party, or committee.

Subd. 10. **Meeting facilities.** It is not a violation of this section for a corporation to provide meeting facilities to a committee, political party, or candidate on a nondiscriminatory and nonpreferential basis.

Subd. 11. **Messages on premises.** It is not a violation of this section for a corporation selling products or services to the public to post on its public premises messages that promote participation in precinct caucuses, voter registration, or elections if the messages are not controlled by or operated for the advantage of a candidate, political party, or committee.

Subd. 12. [Repealed, 2010 c 397 s 20]

Subd. 13. **Aiding violation; penalty.** An individual who aids, abets, or advises a violation of this section is guilty of a gross misdemeanor.

Subd. 14. **Prosecutions; venue.** Violations of this section may be prosecuted in the county where the payment or contribution was made, where services were rendered, or where money was paid or distributed.

Subd. 15. **Nonprofit corporation exemption.** The prohibitions in this section do not apply to a nonprofit corporation that:

- (1) is not organized or operating for the principal purpose of conducting a business;
- (2) has no shareholders or other persons affiliated so as to have a claim on its assets or earnings; and
- (3) was not established by a business corporation or a labor union and has a policy not to accept significant contributions from those entities.

Subd. 16. **Employee political fund solicitation.** Any solicitation of political contributions by an employee must be in writing, informational and nonpartisan in nature, and not promotional for any particular candidate or group of candidates. The solicitation must consist only of a general request on behalf of an independent political committee (conduit fund) and must state that there is no minimum contribution, that a contribution or lack thereof will in no way impact the employee's employment, that the employee must direct the contribution to candidates of the employee's choice, and that any response by the employee shall remain confidential and shall not be directed to the employee's supervisors or managers. Questions from an employee regarding a solicitation may be answered orally or in writing consistent with the above requirements. Nothing in this subdivision authorizes a corporate donation of an employee's time prohibited under subdivision 2.

Subd. 17. **Nonprofit corporation political activity.** It is not a violation of this section for a nonprofit corporation to provide administrative assistance to one political committee or political fund that is associated with the nonprofit corporation and registered with the Campaign Finance and Public Disclosure Board under section 10A.14. Such assistance must be limited to accounting, clerical or legal services, bank charges, utilities, office space, and supplies. The records of the

political committee or political fund may be kept on the premises of the nonprofit corporation.

The administrative assistance provided by the nonprofit corporation to the political committee or political fund is limited annually to the lesser of \$5,000 or 7-1/2 percent of the expenditures of the political committee or political fund.

History: 1988 c 578 art 3 s 15; 1989 c 209 art 2 s 26; 1992 c 517 art 1 s 1-9; 1993 c 318 art 2 s 49; 1996 c 459 s 3,4; 1997 c 202 art 2 s 63; 2010 c 397 s 16-18

211B.16 PROSECUTION.

Subdivision 1. [Repealed, 2004 c 277 s 13]

Subd. 2. [Repealed, 2004 c 277 s 13]

Subd. 3. **County attorney authority.** A county attorney may prosecute any violation of this chapter.

History: 1988 c 578 art 3 s 16; 2004 c 277 s 5

211B.17 FORFEITURE OF NOMINATION OR OFFICE; CIRCUMSTANCES WHERE NOT FORFEITED.

Subdivision 1. **Forfeiture of nomination or office.** Except as provided in subdivision 2, if a candidate is found guilty of violating this chapter or an offense was committed by another individual with the knowledge, consent, or connivance of the candidate, the court, after entering the adjudication of guilty, shall enter a supplemental judgment declaring that the candidate has forfeited the nomination or office. If the court enters the supplemental judgment, it shall transmit to the filing officer a transcript of the supplemental judgment, the nomination or office becomes vacant, and the vacancy must be filled as provided by law.

Subd. 2. **Circumstances where nomination or office not forfeited.** In a trial for a violation of this chapter, the candidate's nomination or election is not void if the court finds that:

(1) an offense, though committed by the candidate or with the candidate's knowledge, consent, or connivance, was trivial; or

(2) an act or omission of a candidate arose from accidental miscalculation or other reasonable cause, but in any case not from a want of good faith;

and the court also finds that it would be unjust for a candidate to forfeit the nomination or election.

None of these findings is a defense to a conviction under this chapter.

History: 1988 c 578 art 3 s 17

211B.18 DISQUALIFIED CANDIDATE NOT TO HOLD VARIOUS POSITIONS.

A candidate whose election to office has been set aside for a violation of this chapter may not be appointed, during the period fixed by law as the term of the office, to fill a vacancy in that office. A candidate or other individual who is convicted of a violation of this chapter may not be appointed, during the period fixed by law as the term of the office with respect to which the election was held and the offense was committed, to fill a vacancy that may occur in the office. An appointment to an office made contrary to the provisions of this section is void.

A candidate or other individual who is convicted of a violation of this chapter is not qualified, during the period fixed by law as the term of the office with respect to which the election

was held and the offense was committed, to fill a vacancy in an office for which the legislature may establish qualifications under article XII, section 3, of the Minnesota Constitution.

History: 1988 c 578 art 3 s 18

211B.19 PENALTIES FOR VIOLATION.

A violation of this chapter for which no other penalty is provided is a misdemeanor.

History: 1988 c 578 art 3 s 19

211B.20 DENIAL OF ACCESS BY POLITICAL CANDIDATES TO MULTIPLE UNIT DWELLINGS.

Subdivision 1. **Prohibition.** (a) It is unlawful for a person, either directly or indirectly, to deny access to an apartment house, dormitory, nursing home, manufactured home park, other multiple unit facility used as a residence, or an area in which two or more single-family dwellings are located on private roadways to a candidate who has:

- (1) organized a campaign committee under applicable federal or state law;
- (2) filed a financial report as required by section 211A.02; or
- (3) filed an affidavit of candidacy for elected office.

A candidate granted access under this section must be allowed to be accompanied by campaign volunteers.

(b) Access to a facility or area is only required if it is located within the district or territory that will be represented by the office to which the candidate seeks election, and the candidate and any accompanying campaign volunteers seek access exclusively for the purpose of campaigning for a candidate or registering voters. The candidate must be seeking election to office at the next general or special election to be held for that office.

(c) A candidate and any accompanying campaign volunteers granted access under this section must be permitted to leave campaign materials for residents at their doors, except that the manager of a nursing home may direct that the campaign materials be left at a central location within the facility. The campaign materials must be left in an orderly manner.

(d) If a facility or area contains multiple buildings, a candidate and accompanying volunteers must be permitted to access more than one building on a single visit, but access is limited to only one building at a time. If multiple candidates are traveling together, each candidate and that candidate's accompanying volunteers is limited to one building at a time, but all of the candidates and accompanying volunteers traveling together must not be restricted to accessing the same building at the same time.

(e) A violation of this section is a petty misdemeanor.

Subd. 2. **Exceptions.** Subdivision 1 does not prohibit:

(1) denial of admittance into a particular apartment, room, manufactured home, or personal residential unit;

(2) requiring reasonable and proper identification as a necessary prerequisite to admission to a multiple unit dwelling;

(3) in the case of a nursing home or a registered housing with services establishment providing assisted living services meeting the requirements of section 144G.03, subdivision 2, denial of permission to visit certain persons for valid health reasons;

(4) limiting visits by candidates or volunteers accompanied by the candidate to a reasonable number of persons or reasonable hours;

(5) requiring a prior appointment to gain access to the facility; or

(6) denial of admittance to or expulsion from a multiple unit dwelling for good cause.

History: *1988 c 578 art 3 s 20; 2010 c 314 s 3*

211B.205 PARTICIPATION IN PUBLIC PARADES.

If a public parade allows candidates, a candidate must be allowed to participate for a fee that is not greater than the amount that is charged to other units participating in the parade.

History: *1Sp2001 c 10 art 18 s 40*

211B.21 APPLICABILITY.

Nothing in section 211B.17 or 211B.18 may be construed to limit the ability of each house of the legislature to act as judge of the election returns and eligibility of its own members.

History: *1988 c 578 art 3 s 21*

211B.31 DEFINITION.

As used in sections 211B.32 to 211B.36, "office" means the Office of Administrative Hearings.

History: *2004 c 277 s 6*

211B.32 COMPLAINTS OF UNFAIR CAMPAIGN PRACTICES.

Subdivision 1. **Administrative remedy; exhaustion.** A complaint alleging a violation of chapter 211A or 211B must be filed with the office. The complaint must be finally disposed of by the office before the alleged violation may be prosecuted by a county attorney.

Subd. 2. **Limitation on filing.** The complaint must be filed with the office within one year after the occurrence of the act or failure to act that is the subject of the complaint, except that if the act or failure to act involves fraud, concealment, or misrepresentation that could not be discovered during that one-year period, the complaint may be filed with the office within one year after the fraud, concealment, or misrepresentation was discovered.

Subd. 3. **Form of complaint.** The complaint must be in writing, submitted under oath, and detail the factual basis for the claim that a violation of law has occurred. The office may prescribe the form of a complaint.

Subd. 4. **Proof of claim.** The burden of proving the allegations in the complaint is on the complainant. The standard of proof of a violation of section 211B.06, relating to false statements in paid political advertising or campaign material, is clear and convincing evidence. The standard of proof of any other violation of chapter 211A or 211B is a preponderance of the evidence.

Subd. 5. **Filing fee; waiver; refund.** (a) The complaint must be accompanied by a filing fee of \$50, unless filed by a filing officer under section 211A.05, subdivision 2.

(b) The office may waive the payment of the filing fee, if the individual seeking a waiver of the fee files with the office an affidavit stating that the individual is financially unable to pay the fee.

(c) The office may refund the filing fee of a complainant who prevails on the merits.

Subd. 6. **Service on respondent.** Upon receipt of the filed complaint, the office must immediately notify the respondent and provide the respondent with a copy of the complaint by the most expeditious means available.

History: 2004 c 277 s 7

211B.33 PRIMA FACIE REVIEW.

Subdivision 1. **Time for review.** The chief administrative law judge must randomly assign an administrative law judge to review the complaint. Within one business day after the complaint was filed with the office, when practicable, but never longer than three business days, the administrative law judge must make a preliminary determination for its disposition.

Subd. 2. **Recommendation.** (a) If the administrative law judge determines that the complaint does not set forth a prima facie violation of chapter 211A or 211B, the administrative law judge must dismiss the complaint.

(b) If the administrative law judge determines that the complaint sets forth a prima facie violation of section 211B.06 and was filed within 60 days before the primary or special election or within 90 days before the general election to which the complaint relates, the administrative law judge must conduct an expedited probable cause hearing under section 211B.34.

(c) If the administrative law judge determines that the complaint sets forth a prima facie violation of a provision of chapter 211A or 211B, other than section 211B.06, and that the complaint was filed within 60 days before the primary or special election or within 90 days before the general election to which the complaint relates, the administrative law judge, on request of any party, must conduct an expedited probable cause hearing under section 211B.34.

(d) If the administrative law judge determines that the complaint sets forth a prima facie violation of chapter 211A or 211B, and was filed more than 60 days before the primary or special election or more than 90 days before the general election to which the complaint relates, the administrative law judge must schedule an evidentiary hearing under section 211B.35.

Subd. 3. **Notice to parties.** The office must notify all parties of the determination made under subdivision 2. If the complaint is scheduled for hearing, the notice must identify the time and place of the hearing and inform all parties that they may submit evidence, affidavits, documentation, and argument for consideration by the administrative law judge.

Subd. 4. **Joinder and separation of complaints.** The chief administrative law judge may direct that two or more complaints be joined for disposition if the chief administrative law judge determines that the allegations in each complaint are of the same or similar character, are based on the same act or failure to act, or are based on two or more acts or failures to act constituting parts of a common scheme or plan. If one complaint contains two or more allegations, the chief administrative law judge may separate the allegations, if they are not of the same or similar character, if they are not based on the same act or failure to act, or if they are not based on two or more acts or failures to act constituting parts of a common scheme or plan. If the chief administrative law judge separates the allegations in a complaint, the assigned administrative law judge or judges may make separate recommendations under subdivision 2 for each allegation.

History: 2004 c 277 s 8

211B.34 PROBABLE CAUSE HEARING.

Subdivision 1. **Time for review.** The assigned administrative law judge must hold a

probable cause hearing on the complaint no later than three business days after receiving the assignment if an expedited hearing is required by section 211B.33, except that for good cause the administrative law judge may hold the hearing no later than seven days after receiving the assignment. If an expedited hearing is not required by section 211B.33, the administrative law judge must hold the hearing not later than 30 days after receiving the assignment.

Subd. 2. **Disposition.** At the probable cause hearing, the administrative law judge must make one of the following determinations:

(a) The complaint is frivolous, or there is no probable cause to believe that the violation of law alleged in the complaint has occurred. If the administrative law judge makes either determination, the administrative law judge must dismiss the complaint.

(b) There is probable cause to believe that the violation of law alleged in the complaint has occurred. If the administrative law judge so determines, the chief administrative law judge must schedule the complaint for an evidentiary hearing under section 211B.35.

Subd. 3. **Reconsideration by chief administrative law judge.** (a) If the administrative law judge dismisses the complaint, the administrative law judge shall provide to the complainant written notice of the right to seek reconsideration of the decision on the record by the chief administrative law judge.

(b) A petition for reconsideration must be filed within two business days after the dismissal. The chief administrative law judge must make a decision on the petition within three business days after receiving the petition. If the chief administrative law judge determines that the assigned administrative law judge made a clear error of law and grants the petition, within five business days after granting the petition, the chief administrative law judge shall schedule the complaint for an evidentiary hearing under section 211B.35.

History: 2004 c 277 s 9

211B.35 EVIDENTIARY HEARING BY PANEL.

Subdivision 1. **Deadline for hearing.** When required by section 211B.34, subdivision 2 or 3, the chief administrative law judge must assign the complaint to a panel of three administrative law judges for an evidentiary hearing. The hearing must be held within the following times:

(1) ten days after the complaint was assigned, if an expedited probable cause hearing was requested or required under section 211B.33;

(2) 30 days after the complaint was filed, if it was filed within 60 days before the primary or special election or within 90 days before the general election to which the complaint relates; or

(3) 90 days after the complaint was filed, if it was filed at any other time.

For good cause shown, the panel may extend the deadline set forth in clause (2) or (3) by 60 days.

Subd. 2. **Disposition of complaint.** The panel must determine whether the violation alleged in the complaint occurred and must make at least one of the following dispositions:

(a) The panel may dismiss the complaint.

(b) The panel may issue a reprimand.

(c) The panel may find that a statement made in a paid advertisement or campaign material violated section 211B.06.

(d) The panel may impose a civil penalty of up to \$5,000 for any violation of chapter 211A or 211B.

(e) The panel may refer the complaint to the appropriate county attorney.

Subd. 3. **Time for disposition.** The panel must dispose of the complaint:

(1) within three days after the hearing record closes, if an expedited probable cause hearing was required by section 211B.33; and

(2) within 14 days after the hearing record closes, if an expedited probable cause hearing was not required by section 211B.33.

History: 2004 c 277 s 10

211B.36 PROCEDURES.

Subdivision 1. **Evidence and argument.** The administrative law judge or panel may consider any evidence and argument submitted until a hearing record is closed, including affidavits and documentation, or may continue a hearing to enable the parties to submit additional testimony.

Subd. 2. **Withdrawal of complaint.** At any time before an evidentiary hearing under section 211B.35 begins, a complainant may withdraw a complaint filed under section 211B.32. After the evidentiary hearing begins, a complaint filed under section 211B.32 may only be withdrawn with the permission of the panel.

Subd. 3. **Costs.** If the assigned administrative law judge or panel determines the complaint is frivolous, they may order the complainant to pay the respondent's reasonable attorney fees and to pay the costs of the office in the proceeding in which the complaint was dismissed.

Subd. 4. **Hearings public.** A hearing under section 211B.34 or 211B.35 may be conducted by conference telephone call or by interactive television. All hearings must be open to the public.

Subd. 5. **Judicial review.** A party aggrieved by a final decision on a complaint filed under section 211B.32 is entitled to judicial review of the decision as provided in sections 14.63 to 14.69; however, proceedings on a complaint filed under section 211B.32 are not a contested case within the meaning of chapter 14 and are not otherwise governed by chapter 14.

History: 2004 c 277 s 11

211B.37 COSTS ASSESSED.

Except as otherwise provided in section 211B.36, subdivision 3, the chief administrative law judge shall assess the cost of considering complaints filed under section 211B.32 as provided in this section. Costs of complaints relating to a statewide ballot question or an election for a statewide or legislative office must be assessed against the appropriation from the general fund to the general account of the state elections campaign fund in section 10A.31, subdivision 4. Costs of complaints relating to any other ballot question or elective office must be assessed against the county or counties in which the election is held. Where the election is held in more than one county, the chief administrative law judge shall apportion the assessment among the counties in proportion to their respective populations within the election district to which the complaint relates according to the most recent decennial federal census.

History: 2004 c 277 s 12