

CHAPTER 39A

ELECTION MISCONDUCT

Referred to in §39.3, 43.5, 260C.15, 260C.39, 275.35, 277.3, 296.4, 298.18, 357J.16, 360.1, 372.2, 376.1

[P]
See also definitions in §39.3

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39A.1 Title and purpose — election officials defined.

1. This chapter may be cited and referred to as the “*Election Misconduct and Penalties Act*”.

2. The purpose of this chapter is to identify actions which threaten the integrity of the election process and to impose significant sanctions upon persons who intentionally commit those acts. It is the intent of the general assembly that offenses with the greatest potential to affect the election process be vigorously prosecuted and strong punishment meted out through the imposition of felony sanctions which, as a consequence, remove the voting rights of the offenders. Other offenses are still considered serious, but based on the factual context in which they arise, they may not rise to the level of offenses to which felony penalties attach. The general assembly also recognizes that instances may arise in which technical infractions of chapters 39 through 53 may occur which do not merit any level of criminal sanction. In such instances, administrative notice from the state or county commissioner of elections is sufficient. Mandates or proscriptions in chapters 39 through 53 which are not specifically included in this chapter shall be considered to be directive only, without criminal sanction.

3. For the purposes of this chapter, “*election officials*” include the state commissioner, the county commissioner, employees of the state commissioner and county commissioner who are responsible for carrying out functions or duties under chapters 39 through 53, and precinct election officials appointed pursuant to sections 49.12, 49.14, 49.18, and 53.23.

2002 Acts, ch 1071, §1

39A.2 Election misconduct in the first degree.

1. A person commits the crime of election misconduct in the first degree if the person willfully commits any of the following acts:

a. Registration fraud.

(1) Produces, procures, submits, or accepts a voter registration application that is known by the person to be materially false, fictitious, forged, or fraudulent.

(2) Falsely swears to an oath required pursuant to section 48A.7A.

b. Vote fraud.

(1) Destroys, delivers, or handles an application for a ballot or an absentee ballot with the intent of interfering with the voter’s right to vote.

(2) Produces, procures, submits, or accepts a ballot or an absentee ballot, or produces, procures, casts, accepts, or tabulates a ballot that is known by the person to be materially false, fictitious, forged, or fraudulent.

(3) Votes or attempts to vote more than once at the same election, or votes or attempts to vote at an election knowing oneself not to be qualified.

(4) Makes a false or untrue statement in an application for an absentee ballot or makes or signs a false certification or affidavit in connection with an absentee ballot.

(5) Otherwise deprives, defrauds, or attempts to deprive or defraud the citizens of this state of a fair and impartially conducted election process.

c. Duress. Intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, a person to do or to refrain from doing any of the following:

(1) To register to vote, to vote, or to attempt to register to vote.

- (2) To urge or aid a person to register to vote, to vote, or to attempt to register to vote.
- (3) To sign a petition nominating a candidate for public office or a petition requesting an election for which a petition may legally be submitted.
- (4) To exercise a right under chapters 39 through 53.
- d. *Bribery.*
 - (1) Pays, offers to pay, or causes to be paid money or any other thing of value to a person to influence the person's vote.
 - (2) Pays, offers to pay, or causes to be paid money or any other thing of value to an election official conditioned on some act done or omitted to be done contrary to the person's official duty in relation to an election.
 - (3) Receives money or any other thing of value knowing that it was given in violation of subparagraph (1) or (2).
- e. *Conspiracy.* Conspires with or acts as an accessory with another to commit an act in violation of paragraphs "a" through "d".
- f. *Voting equipment tampering.* Intentionally alters or damages any computer software or any physical part of voting equipment, automatic tabulating equipment, or any other part of a voting system.
- 2. Election misconduct in the first degree is a class "D" felony.
2002 Acts, ch 1071, §2; 2007 Acts, ch 35, §1, 7; 2008 Acts, ch 1115, §89, 90; 2009 Acts, ch 57, §3
Referred to in §49.11

39A.3 Election misconduct in the second degree.

- 1. A person commits the crime of election misconduct in the second degree if the person willfully commits any of the following acts:
 - a. *Interference with validity of election.*
 - (1) Possesses an official ballot outside of the voting room unless the person is an election official or other person authorized by law to possess such a ballot.
 - (2) Makes or possesses a counterfeit of an official election ballot.
 - (3) Solicits or encourages a person to vote in an election knowing that person is not qualified to vote in the election.
 - (4) Files a challenge containing false information under section 48A.14 or 49.79.
 - b. *Actions by election official.* As an election official:
 - (1) Refuses to register a person who is entitled to register to vote under chapter 48A.
 - (2) Accepts a fee from an applicant applying for registration.
 - (3) While the polls are open, opens a ballot received from a voter, except as permitted by law.
 - (4) Marks a ballot by folding or otherwise so as to be able to recognize it.
 - (5) Attempts to learn how a voter marked a ballot.
 - (6) Causes a voter to cast a vote contrary to the voter's intention.
 - (7) Changes a ballot, or in any way causes a vote to be recorded contrary to the intention of the person casting that vote.
 - (8) Allows a person to do any of the acts proscribed by subparagraphs (1) through (7).
- 2. Election misconduct in the second degree is an aggravated misdemeanor.
2002 Acts, ch 1071, §3; 2008 Acts, ch 1115, §83

39A.4 Election misconduct in the third degree.

- 1. A person commits the crime of election misconduct in the third degree if the person willfully commits any of the following acts:
 - a. *Election day acts.* Any of the following on election day:
 - (1) Loitering, congregating, electioneering, posting signs, treating voters, or soliciting votes, during the receiving of the ballots, either on the premises of a polling place or within three hundred feet of an outside door of a building affording access to a room where the polls are held, or of an outside door of a building affording access to a hallway, corridor, stairway, or other means of reaching the room where the polls are held. This subparagraph does not apply to the posting of signs on private property not a polling place, except that the

placement of a sign that is more than ninety square inches in size on a motor vehicle, trailer, or semitrailer, or its attachment to a motor vehicle, trailer, or semitrailer parked on public property within three hundred feet of a polling place is prohibited.

(2) Interrupting, hindering, or opposing a voter while in or approaching the polling place for the purpose of voting.

(3) As a voter, submitting a false statement as to the voter's ability to mark a ballot.

(4) Interfering or attempting to interfere with a voter when the voter is inside the enclosed voting space, or when the voter is marking a ballot.

(5) Endeavoring to induce a voter to show how the voter marks or has marked a ballot.

(6) Marking, or causing in any manner to be marked, on a ballot, any character for the purpose of identifying such ballot.

b. Actions by election official. As an election official:

(1) Serving as a member of a challenging committee or observer under section 49.104, subsection 2, 5, or 6, while serving as a precinct election official at the polls.

(2) Failing to perform duties prescribed by chapters 39 through 53, or performing those duties in such a way as to hinder the object of the law.

(3) Disclosing the manner in which a person's ballot has been voted to anyone except as ordered by a court.

(4) Failing to carry out a duty with regard to access under chapter 22 to a public record that relates to an election or voter registration.

(5) Furnishing a voter with a ballot other than the proper ballot to be used at an election.

(6) Making or consenting to a false entry on the list of voters or poll books.

(7) Placing or permitting another election official to place anything other than a ballot into a ballot box as provided in section 49.85, or permitting a person other than an election official to place anything into a ballot box.

(8) Taking or permitting to be taken out of a ballot box a ballot deposited in the ballot box, except in the manner prescribed by law.

(9) Destroying or altering a ballot that has been given to a voter.

(10) Permitting a person to vote in a manner prohibited by law.

(11) Refusing or rejecting the vote of a voter qualified to vote.

(12) Wrongfully acting or refusing to act for the purpose of avoiding an election, or of rendering invalid a ballot cast from a precinct or other voting district.

(13) Having been deputized to carry the poll books of an election to the place where they are to be canvassed, failing to deliver them to such place, safe, with seals unbroken, and within the time specified by law.

c. Miscellaneous offenses.

(1) As a party committee member or a primary election officer or public officer upon whom a duty is imposed by chapter 43 or by a statute applicable to chapter 43, neglecting to perform any such duty, or performing any such duty in such a way as to hinder the object of the statute, or by disclosing to anyone, except as may be ordered by a court, the manner in which a ballot may have been voted.

(2) As a person who is designated pursuant to section 43.4 to report the results of a precinct caucus as it relates to the selection and reporting of delegates selected as part of the presidential nominating process or who is designated pursuant to section 43.4 to tabulate and report the number of persons attending the caucus favoring each presidential candidate, failing to perform those duties, falsifying the information, or omitting information required to be reported under section 43.4.

(3) Making a false answer under chapter 43 relative to a person's qualifications and party affiliations.

(4) Paying, offering to pay, or receiving compensation for voter registration assistance in violation of section 48A.25.

(5) Using voter registration information in violation of section 48A.39.

(6) As a candidate, making a promise to name or appoint another person to a position or to secure a position for another person in violation of section 49.120.

(7) Soliciting the use of influence from a candidate in violation of section 49.121.

(8) As a public official or employee, or a person acting under color of a public official

or employee, knowingly requiring a public employee to act in connection with an absentee ballot in violation of section 53.7.

(9) As a person designated by the county commissioner of elections or by the voter casting an absentee ballot, failing to return an absentee ballot in violation of section 53.35A.

(10) As an incumbent officeholder of, or a candidate for, an office being voted for at the election in progress, serving as a member of a challenging committee or observer under section 49.104, subsection 2, 5, or 6, or section 53.23, subsection 4.

(11) Returning a voted absentee ballot, by mail or in person, to the commissioner's office and the person returning the ballot is not the voter, the voter's designee, or a special precinct election official designated pursuant to section 53.22, subsection 1.

(12) Making a false or untrue statement reporting that a voted absentee ballot was returned to the commissioner's office, by mail or in person, by a person other than the voter, the voter's designee, or a special precinct election official designated pursuant to section 53.22, subsection 1.

2. Election misconduct in the third degree is a serious misdemeanor.

2002 Acts, ch 1071, §4; 2004 Acts, ch 1083, §1, 37; 2007 Acts, ch 59, §20, 38; 2007 Acts, ch 215, §222

Referred to in §49.92

39A.5 Election misconduct in the fourth degree.

1. A person commits the crime of election misconduct in the fourth degree if the person willfully commits any of the following acts:

a. Election day acts.

(1) As an employer, denying an employee the privilege conferred by section 49.109, or subjecting an employee to a penalty or reduction of wages because of the exercise of that privilege.

(2) Failing or refusing to comply with an order or command of an election official made pursuant to chapter 49 for which another penalty is not provided.

(3) Circulating, communicating, or attempting to circulate or communicate information with reference to the result of the counted ballots or making a compilation of vote subtotals before the polls are closed in violation of section 53.23.

(4) Destroying, defacing, tearing down, or removing a list of candidates, card of instruction, or sample ballot posted as provided by law prior to the closing of the polls.

(5) Removing or destroying the supplies or articles furnished for the purpose of enabling voters to prepare their ballots.

(6) Violating or attempting to violate any of the provisions or requirements of chapter 49 to which another penalty does not apply.

b. Miscellaneous offenses.

(1) As a public employee, acting in connection with an absentee ballot in violation of section 53.7.

(2) Violating any provision of chapter 53 for which another penalty is not provided.

2. Election misconduct in the fourth degree is a simple misdemeanor.

2002 Acts, ch 1071, §5; 2007 Acts, ch 59, §21, 38; 2007 Acts, ch 190, §14; 2008 Acts, ch 1115, §84; 2010 Acts, ch 1060, §1

39A.6 Technical infractions — notice.

If the state commissioner or county commissioner becomes aware of an apparent technical violation of a provision of chapters 39 through 53, the state commissioner or county commissioner may administratively provide a written notice and letter of instruction to the responsible person regarding proper compliance procedures. This notice is not a final determination of facts or law in the matter, and does not entitle a person to a proceeding under chapter 17A.

2002 Acts, ch 1071, §6