

CHAPTER 1071
ELECTION MISCONDUCT
H.F. 2409

AN ACT relating to election misconduct and providing criminal penalties.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I¹
ELECTION MISCONDUCT AND PENALTIES

Section 1. NEW SECTION. 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.

Sec. 2. NEW SECTION. 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. Produces, procures, submits, or accepts a voter registration application that is known by the person to be materially false, fictitious, forged, or fraudulent.
 - 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 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 exercise a right under chapters 39 through 53.

¹ There is no Division II in this bill as enacted

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".

2. Election misconduct in the first degree is a class "D" felony.

Sec. 3. NEW SECTION. 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.

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.

Sec. 4. NEW SECTION. 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.

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

Sec. 5. NEW SECTION. 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 51.11, 52.40, or 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) Neglecting or refusing to return an absentee ballot in violation of section 53.35, or violating any other provision of chapter 53 for which another penalty is not provided.

(3) Filing a challenge containing false information under section 48A.14.

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

Sec. 6. NEW SECTION. 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.

Sec. 7. Section 39.3, unnumbered paragraph 1, Code 2001, is amended to read as follows:

The definitions established by this section shall apply wherever the terms so defined appear in this chapter and in chapters 39A, 43, 44, 45, 47, 48A through 53, and 56 unless the context in which any such term is used clearly requires otherwise.

Sec. 8. Section 48A.25, unnumbered paragraph 1, Code 2001, is amended to read as follows:

A person may pay, offer to pay, or accept compensation for assisting others in completing voter registration forms only if the compensation is based solely on the time spent providing the assistance. Paying, offering to pay, or receiving compensation based on the number of registration forms completed, or the party affiliations shown on completed registration forms, or on any other performance criteria, is ~~a serious misdemeanor~~ unlawful.

Sec. 9. Section 48A.39, Code 2001, is amended to read as follows:

48A.39 USE OF REGISTRATION INFORMATION — PENALTY.

Information about individual registrants obtained from voter registration records shall be used only to request the registrant's vote at an election, or for another genuine political purpose, or for a bona fide official purpose by an elected official, or for bona fide political research, but shall not be used for any commercial purposes. ~~A person who uses registration information in violation of this section commits a serious misdemeanor.~~

Sec. 10. Section 52.40, subsection 4, Code 2001, is amended to read as follows:

4. The tabulation of ballots received from early pick-up sites shall be conducted at the counting center during the hours the polls are open, in the manner provided in sections 52.36 and 52.37, except that the room in which the ballots are being counted shall not be open to the public during the hours in which the polls are open and the room shall be policed so as to prevent any person other than those whose presence is authorized by this section and sections 52.36 and 52.37 from obtaining information about the progress of the count. The only persons who may be admitted to that room, as long as admission does not impede the progress of the count, are the members of the board, one challenger representing each political party, one observer representing any nonparty political organization or any candidate nominated by petition pursuant to chapter 45, and the commissioner or the commissioner's designee. No compilation of vote subtotals shall be made while the polls are open. ~~Any person who makes a compilation of vote subtotals before the polls are closed commits a simple misdemeanor.~~ It shall be unlawful for any person to communicate or attempt to communicate, directly or indirectly, information regarding the progress of the count at any time before the polls are closed.

Sec. 11. Section 53.7, subsection 2, Code 2001, is amended to read as follows:

2. ~~Any It is unlawful for any~~ public officer or employee, or any person acting under color of a public officer or employee, ~~who to knowingly requires that~~ require a public employee solicit an application or request for an application for an absentee ballot, or knowingly requires that an employee take an affidavit or request for an affidavit in connection with an absentee ballot application, ~~commits a serious misdemeanor.~~²

Sec. 12. Section 53.35, Code 2001, is amended to read as follows:

53.35 REFUSAL TO RETURN BALLOT.

~~Any It is unlawful for any~~ person ~~who~~, having procured an official ballot or ballots, ~~shall to~~ willfully neglect or refuse to cast or return the same in the manner provided, ~~or who shall willfully violate any provision of this chapter, shall, unless otherwise provided, be guilty of a simple misdemeanor.~~ Any person who applies for a ballot and willfully neglects or refuses to return the same shall be deemed to have committed an offense in the county to which such ballot was returnable.

Sec. 13. Section 53.35A, Code 2001, is amended to read as follows:

53.35A FAILURE TO RETURN BALLOT — PENALTY.

~~Any It is unlawful for any~~ person designated by the commissioner, or by the elector casting the absentee ballot, to deliver the sealed envelope containing the absentee ballot, ~~who to willfully fails fail~~ to return the ballot to the commissioner or the commissioner's designee, ~~is guilty of a serious misdemeanor.~~

Sec. 14. Section 53.49, Code 2001, is amended to read as follows:

53.49 APPLICABLE TO ARMED FORCES AND OTHER CITIZENS.

The provisions of this division as to absent voting shall apply only to absent voters in the armed forces of the United States as defined for the purpose of absentee voting in section 53.37. The provisions of sections 53.1 to 53.36, through 53.35 shall apply to all other qualified voters not members of the armed forces of the United States.

Sec. 15. Sections 43.119, 43.120, 48A.41, 49.107, 49.110, 49.111, 49.113, 49.119, 51.16, 51.17, 53.36, 722.4, 722.5, and 722.8, Code 2001, are repealed.

Sec. 16. Section 722.7, Code Supplement 2001, is repealed.

Approved April 4, 2002

² See chapter 1175, §80 herein