CHAPTER 12

PROHIBITED ELECTION PRACTICES

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NOTE: 2005 Wis. Act 451, which made major revisions to the election laws, including to Chapter 12, contains an extensive prefatory note explaining the changes.

Cross−reference: See definitions in s. 5.02.

12.01 Definitions. The definitions given under s. 11.01 [s. 11.0101] apply to this chapter, except as follows:

NOTE: The correct cross−reference is shown in brackets. Corrective legislation is pending.

(1) "Candidate" includes a candidate for national office.

(2) "Commission" means the elections commission.

History: 1973 c. 334; 1975 c. 93; 1977 c. 427; 1979 c. 89; 1983 a. 484; 2015 a. 118.

12.02 Construction. In this chapter, criminal intent shall be construed in accordance with s. 939.23.

History: 1977 c. 427.

12.03 Campaigning restricted. (1) No election official may engage in electioneering on election day. No municipal clerk or employee of the clerk may engage in electioneering in the clerk's office or at the alternate site under s. 6.855 during the hours that ballots may be cast at those locations.

(2) (a) 1. No person may engage in electioneering during polling hours on election day at a polling place.

2. No person may engage in electioneering in the municipal clerk's office or at an alternate site under s. 6.855 during the hours that absentee ballots may be cast.

(b) 1. No person may engage in electioneering during polling hours on any public property on election day within 100 feet of an entrance to a building containing a polling place.

2. No person may engage in electioneering during the hours that absentee ballots may be cast on any public property within 100 feet of an entrance to a building containing the municipal clerk's office or an alternate site under s. 6.855.

3. No person may engage in electioneering within 100 feet of an entrance to or within a qualified retirement home or residential care facility while special voting deputies are present at the home or facility under s. 6.875 (6).

(d) This subsection does not apply to the placement of any material on the bumper of a motor vehicle that is parked or operated at a place and time where electioneering is prohibited under this subsection.

(3) A municipal clerk, election inspector or law enforcement officer may remove posters or other advertising which is placed in violation of this section.

(4) In this section, "electioneering" means any activity which is intended to influence voting at an election.

History: 1973 c. 334; 1977 c. 427; 1979 c. 89; 1983 a. 484; 1993 a. 173; 2005 a. 451; 2011 a. 23; 2013 a. 159.

Violators may not be deprived of the right to vote, although penalties may follow. Constitutional issues are discussed. 61 Atty. Gen. 441.

12.035 Posting and distribution of election−related material. (1) In this section, "election−related material" means any written matter which describes, or purports to describe, the rights or responsibilities of individuals voting or registering to vote at a polling place or voting an absentee ballot at the office of the municipal clerk or an alternate site under s. 6.855.

(2) The legislature finds that posting or distributing election−related material at the polling place, at locations where absentee ballots may be cast, or near the entrance to such locations when voting is taking place may mislead and confuse electors about their rights and responsibilities regarding the exercise of the franchise and tends to disrupt the flow of voting activities at such locations. The legislature finds that the restrictions imposed by this section on the posting or distribution of election−related material are necessary to protect the compelling governmental interest in orderly and fair elections.

(3) (a) No person may post or distribute any election−related material during polling hours on election day at a polling place.

(b) No person may post or distribute any election−related material during polling hours on any public property on election day within 100 feet of an entrance to a building containing a polling place.

(c) No person may post or distribute any election−related material at the office of the municipal clerk or at an alternate site under s. 6.855 during hours that absentee ballots may be cast.

(d) No person may post or distribute election−related material during the hours that absentee ballots may be cast on any public property within 100 feet of an entrance to a building containing the office of the municipal clerk or an alternate site under s. 6.855.

(4) Subsection (3) does not apply to any of the following:

(a) The posting or distribution of election−related material posted or distributed by the municipal clerk or other election officials.

(b) The placement of any material on the bumper of a motor vehicle located on public property.

(5) A municipal clerk, election inspector, or law enforcement officer may remove election−related material posted in violation of sub. (3) and may confiscate election−related material distributed in violation of sub. (3).

History: 2005 a. 451.

12.04 Communication of political messages. (1) In this section:

(a) "Election campaign period" means:

1. In the case of an election for office, the period beginning on the first day for circulation of nomination papers by candidates, or the first day on which candidates would circulate nomination papers were papers to be required, and ending on the day of the election.

2. In the case of a referendum, the period beginning on the day on which the question to be voted upon is submitted to the electorate and ending on the day on which the referendum is held.

(b) "Political message" means a message intended for a political purpose or a message which pertains to an issue of public policy of possible concern to the electorate, but does not include a message intended solely for a commercial purpose.

(c) "Residential property" means property occupied or suitable to be occupied for residential purposes and property abutting that property for which the owner or renter is responsible for the maintenance or care. If property is utilized for both residential and nonresidential purposes, "residential property" means only the portion of the property occupied or suitable to be occupied for residential purposes.

(2) Except as provided in ss. 12.03 or 12.035 or as restricted under sub. (4), any individual may place a sign containing a political message upon residential property owned or occupied by that individual during an election campaign period.

(3) Except as provided in sub. (4), no county or municipality may regulate the size, shape, placement or content of any sign containing a political message placed upon residential property during an election campaign period.

(4) (a) A county or municipality may regulate the size, shape or placement of any sign if such regulation is necessary to ensure traffic or pedestrian safety. A county or municipality may regulate the size, shape or placement of any sign having an electrical, mechanical or audio auxiliary.

(b) In addition to regulation under par. (a), a municipality may regulate the size, shape or placement of a sign exceeding 11 square feet in area. This paragraph does not apply to a sign which is affixed to a permanent structure and does not extend beyond the perimeter of the structure, if the sign does not obstruct a window, door, fire escape, ventilation shaft or other area which is required by an applicable building code to remain unobstructed.

(5) (a) The renter of residential property may exercise the same right as the owner to place a sign upon the property under sub. (2) in any area of the property occupied exclusively by the renter. The terms of a lease or other agreement under which residential property is occupied shall control in determining whether property is occupied exclusively by a renter.

(b) The owner of residential property may exercise the right granted under sub. (2) in any portion of the property not occupied exclusively by a renter.

(6) This section does not apply to signs prohibited from being erected under s. 84.30.

History: 1985 a. 198; 1993 a. 246; 2005 a. 451; 2009 a. 173.

12.05 False representations affecting elections. No person may knowingly make or publish, or cause to be made or published, a false representation pertaining to a candidate or referendum which is intended or tends to affect voting at an election.

History: 1973 c. 334; 1993 a. 175.

A violation of this section does not constitute defamation per se. Tatur v. Solsrud, 174 Wis. 2d 735, 498 N.W.2d 232 (1993).

12.07 Election restrictions on employers. (1) No person may refuse an employee the privilege of time off for voting under s. 6.76 or subject an employee to a penalty therefor.

(2) No employer may refuse to allow an employee to serve as an election official under s. 7.30 or make any threats or offer any inducements of any kind to the employee for the purpose of preventing the employee from so serving.

(3) No employer or agent of an employer may distribute to any employee printed matter containing any threat, notice or information that if a particular ticket of a political party or organization or candidate is elected or any referendum question is adopted or rejected, work in the employer's place or establishment will cease, in whole or in part, or the place or establishment will be closed, or the salaries or wages of the employees will be reduced, or other threats intended to influence the political opinions or actions of the employees.

(4) No person may, directly or indirectly, cause any person to make a contribution or provide any service or other thing of value to or for the benefit of a committee registered under ch. 11, with the purpose of influencing the election or nomination of a candidate to national, state or local office or the passage or defeat of a referendum by means of the denial or the threat of denial of any employment, position, work or promotion, or any compensation or other benefit of such employment, position or work, or by means of discharge, demotion or disciplinary action or the threat to impose a discharge, demotion or disciplinary action. This subsection does not apply to employment by a committee registered under ch. 11 in connection with a campaign or political party activities. This subsection also does not apply to information provided by any person that expresses that person's opinion on any candidate or committee, any referendum or the possible effects of any referendum, or the policies advocated by any candidate or committee.

History: 1973 c. 334; 1983 a. 484; 1991 a. 316; 2005 a. 451; 2015 a. 117; s. 35.17 correction in (4).

12.08 Denial of government benefits. No person may, directly or indirectly, cause any person to make a contribution or provide any service or other thing of value to or for the benefit of a committee registered under ch. 11, with the purpose of influencing the election or nomination of a candidate to national, state, or local office or the passage or defeat of a referendum by means of the denial or threat of denial of any payment or other benefit of a program established or funded in whole or in part by this state or any local governmental unit of this state, or a program which has applied for funding by this state or any local governmental unit of this state.

History: 1983 a. 484; 1985 a. 304; 2015 a. 117; s. 35.17 correction.

12.09 Election threats. (1) No person may personally or through an agent make use of or threaten to make use of force, violence, or restraint in order to induce or compel any person to vote or refrain from voting at an election.

(2) No person may personally or through an agent, by abduction, duress, or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise at an election.

(3) No person may personally or through an agent, by any act compel, induce, or prevail upon an elector either to vote or refrain from voting at any election for or against a particular candidate or referendum.

History: 1973 c. 334; 1991 a. 316; 2005 a. 451.

12.11 Election bribery. (1) In this section, "anything of value" includes any amount of money, or any object which has utility independent of any political message it contains and the value of which exceeds $1. The prohibitions of this section apply to the distribution of material printed at public expense and available for free distribution if such materials are accompanied by a political message.

(1m) Any person who does any of the following violates this chapter:

(a) Offers, gives, lends or promises to give or lend, or endeavors to procure, anything of value, or any office or employment or any privilege or immunity to, or for, any elector, or to or for any other person, in order to induce any elector to:

1. Go to or refrain from going to the polls.

2. Vote or refrain from voting.

3. Vote or refrain from voting for or against a particular person.

4. Vote or refrain from voting for or against a particular referendum; or on account of any elector having done any of the above.

(b) Receives, agrees or contracts to receive or accept any money, gift, loan, valuable consideration, office or employment personally or for any other person, in consideration that the person or any elector will, so act or has so acted.

(c) Advances, pays or causes to be paid any money to or for the use of any person with the intent that such money or any part thereof will be used to bribe electors at any election.

(2) This section applies to any convention or meeting held for the purpose of nominating any candidate for any election, and to the signing of any nomination paper.

(3) (a) This section does not prohibit a candidate from publicly stating his or her preference for or support of any other candidate for any office to be voted for at the same election. A candidate for an office in which the person elected is charged with the duty of participating in the election or nomination of any person as a candidate for office is not prohibited from publicly stating or pledging his or her preference for or support of any person for such office or nomination.

(b) This section does not apply to money paid or agreed to be paid for or on account of authorized legal expenses which were legitimately incurred at or concerning any election.

(c) This section does not apply where an employer agrees that all or part of election day be given to its employees as a paid holiday, provided that such policy is made uniformly applicable to all similarly situated employees.

(d) This section does not prohibit any person from using his or her own vehicle to transport electors to or from the polls without charge.

(e) This section does not apply to any promise by a candidate to reduce public expenditures or taxes.

History: 1973 c. 334; 1975 c. 93; 1983 a. 484; 1991 a. 316; 1993 a. 213.

There are constitutional limits on the state's power to prohibit candidates from making promises in the course of an election campaign. Some promises are universally acknowledged as legitimate, indeed indispensable to decisionmaking in a democracy. Brown v. Hartlage, 456 U.S. 45 (1982).

12.13 Election fraud. (1) ELECTORS. Whoever intentionally does any of the following violates this chapter:

(a) Votes at any election or meeting if that person does not have the necessary elector qualifications and residence requirements.

(b) Falsely procures registration or makes false statements to the municipal clerk, board of election commissioners or any other election official whether or not under oath.

(c) Registers as an elector in more than one place for the same election.

(d) Impersonates a registered elector or poses as another person for the purpose of voting at an election.

(e) Votes more than once in the same election.

(f) Shows his or her marked ballot to any person or places a mark upon the ballot so it is identifiable as his or her ballot.

(g) Procures an official ballot and neglects or refuses to cast or return it. This paragraph does not apply to persons who have applied for and received absentee ballots.

(h) Procures, assists or advises someone to do any of the acts prohibited by this subsection.

(2) ELECTION OFFICIALS. (a) The willful neglect or refusal by an election official to perform any of the duties prescribed under chs. 5 to 12 is a violation of this chapter.

(b) No election official may:

1. Observe how an elector has marked a ballot unless the official is requested to assist the elector; intentionally permit anyone not authorized to assist in the marking of a ballot to observe how a person is voting or has voted; or disclose to anyone how an elector voted other than as is necessary in the course of judicial proceedings.

2. Illegally issue, write, change or alter a ballot on election day.

3. Permit registration or receipt of a vote from a person who the official knows is not a legally qualified elector or who has refused after being challenged to make the oath or to properly answer the necessary questions pertaining to the requisite requirements and residence; or put into the ballot box a ballot other than the official's own or other one lawfully received.

4. Intentionally assist or cause to be made a false statement, canvass, certificate or return of the votes cast at any election.

5. Willfully alter or destroy a poll or registration list.

6. Intentionally permit or cause a voting machine, voting device or automatic tabulating equipment to fail to correctly register or record a vote cast thereon or inserted therein, or tamper with or disarrange the machine, device or equipment or any part or appliance thereof; cause or consent to the machine, device or automatic tabulating equipment being used for voting at an election with knowledge that it is out of order or is not perfectly set and adjusted so that it will correctly register or record all votes cast thereon or inserted therein; with the purpose of defrauding or deceiving any elector, cause doubt for what party, candidate or proposition a vote will be cast or cause the vote for one party, candidate or proposition to be cast so it appears to be cast for another; or remove, change or mutilate a ballot on a voting machine, device or a ballot to be inserted into automatic tabulating equipment, or do any similar act contrary to chs. 5 to 12.

6m. Obtain an absentee ballot for voting in a qualified retirement home or residential care facility under s. 6.875 (6) and fail to return the ballot to the issuing officer.

7. In the course of the person's official duties or on account of the person's official position, intentionally violate or intentionally cause any other person to violate any provision of chs. 5 to 12 for which no other penalty is expressly prescribed.

8. Intentionally disclose the name or address of any elector who obtains a confidential listing under s. 6.47 (2) to any person who is not authorized by law to obtain that information.

(3) PROHIBITED ACTS. No person may:

(a) Falsify any information in respect to or fraudulently deface or destroy a certificate of nomination, nomination paper, declaration of candidacy or petition for an election, including a recall petition or petition for a referendum; or file or receive for filing a certificate of nomination, nomination paper, declaration of candidacy or any such petition, knowing any part is falsely made.

(am) Fail to file an amended declaration of candidacy as provided in s. 8.21 with respect to a change in information filed in an original declaration within 3 days of the time the amended declaration becomes due for filing; or file a false declaration of candidacy or amended declaration of candidacy. This paragraph applies only to candidates for state or local office.

(b) Wrongfully suppress, neglect or fail to file nomination papers in the person's possession at the proper time and in the proper office; suppress a certificate of nomination which is duly filed.

(c) Willfully or negligently fail to deliver, after having undertaken to do so, official ballots prepared for an election to the proper person, or prevent their delivery within the required time, or destroy or conceal the ballots.

(d) Remove or destroy any of the supplies or conveniences placed in compartments or polling booths.

(e) Prepare or cause to be prepared an official ballot with intent to change the result of the election as to any candidate or referendum; prepare an official ballot which is premarked or which has an unauthorized sticker affixed prior to delivery to an elector; or deliver to an elector an official ballot bearing a mark opposite the name of a candidate or referendum question that might be counted as a vote for or against a candidate or question.

(f) Before or during any election, tamper with voting machines, voting devices or automatic tabulating equipment readied for voting or the counting of votes; disarrange, deface, injure or impair any such machine, device or equipment; or mutilate, injure or destroy a ballot placed or displayed on a voting machine or device, or to be placed or displayed on any such machine, device or automatic tabulating equipment or any other appliance used in connection with the machine, device or equipment.

(g) Falsify any statement relating to voter registration under chs. 5 to 12.

(h) Deface, destroy or remove any legally placed election campaign advertising poster with intent to disrupt the campaign advertising efforts of any committee registered under ch. 11, or alter the information printed thereon so as to change the meaning thereof

to the disadvantage of the candidate or cause espoused. Nothing in this paragraph restricts the right of any owner or occupant of any real property, or the owner or operator of any motor vehicle, to remove campaign advertising posters from such property or vehicle.

(i) Falsely make any statement for the purpose of obtaining or voting an absentee ballot under ss. 6.85 to 6.87.

(j) When called upon to assist an elector who cannot read or write, has difficulty in reading, writing or understanding English, or is unable to mark a ballot or depress a lever or button on a voting machine, inform the elector that a ballot contains names or words different than are printed or displayed on the ballot with the intent of inducing the elector to vote contrary to his or her inclination, intentionally fail to cast a vote in accordance with the elector's instructions or reveal the elector's vote to any 3rd person.

(k) Forge or falsely make the official endorsement on a ballot or knowingly deposit a ballot in the ballot box upon which the names or initials of the ballot clerks, or those of issuing clerks do not appear.

(L) When not authorized, during or after an election, break open or violate the seals or locks on a ballot box containing ballots of that election or obtain unlawful possession of a ballot box with official ballots; conceal, withhold or destroy ballots or ballot boxes; willfully, fraudulently or forcibly add to or diminish the number of ballots legally deposited in a ballot box; or aid or abet any person in doing any of the acts prohibited by this paragraph.

(m) Fraudulently change a ballot of an elector so the elector is prevented from voting for whom the elector intended.

(n) Receive a ballot from or give a ballot to a person other than the election official in charge.

(o) Vote or offer to vote a ballot except as has been received from one of the inspectors.

(p) Receive a completed ballot from a voter unless qualified to do so.

(q) Solicit a person to show how his or her vote is cast.

(r) Remove a ballot from a polling place before the polls are closed.

(s) Solicit another elector to offer assistance under s. 6.82 (2) or 6.87 (5), except in the case of an elector who is blind or visually impaired to the extent that the elector cannot read a ballot.

(t) Obtain an absentee ballot as the agent of another elector under s. 6.86 (3) and fail or refuse to deliver it to such elector.

(u) Provide false documentation of identity for the purpose of inducing an election official to permit the person or another person to vote.

(w) Falsify a ballot application under s. 6.18.

(x) Refuse to obey a lawful order of an inspector made for the purpose of enforcing the election laws; engage in disorderly behavior at or near a polling place; or interrupt or disturb the voting or canvassing proceedings.

(y) After an election, break the locks or seals or reset the counters on a voting machine except in the course of official duties carried out at the time and in the manner prescribed by law; or disable a voting machine so as to prevent an accurate count of the votes from being obtained; or open the registering or recording compartments of a machine with intent to do any such act.

(z) Tamper with automatic tabulating equipment or any record of votes cast or computer program which is to be used in connection with such equipment to count or recount votes at any election so as to prevent or attempt to prevent an accurate count of the votes from being obtained.

(ze) Compensate a person who obtains voter registration forms from other persons at a rate that varies in relation to the number of voter registrations obtained by the person.

(zm) Willfully provide to a municipal clerk false information for the purpose of obtaining a confidential listing under s. 6.47 (2) for that person or another person.

(zn) Disclose to any person information provided under s. 6.47 (8) when not authorized to do so.

(5) UNAUTHORIZED RELEASE OF RECORDS OR INVESTIGATORY INFORMATION. (a) Except as specifically authorized by law and except as provided in par. (b), no investigator, prosecutor, employee of an investigator or prosecutor, or member or employee of the commission may disclose information related to an investigation or prosecution under chs. 5 to 10 or 12, or any other law specified in s. 978.05 (1) or (2) or provide access to any record of the investigator, prosecutor, or the commission that is not subject to access under s. 5.05 (5s) to any person other than an employee or agent of the prosecutor or investigator or a member, employee, or agent of the commission prior to presenting the information or record in a court of law.

(b) This subsection does not apply to any of the following communications made by an investigator, prosecutor, employee of an investigator or prosecutor, or member or employee of the commission:

1. Communications made in the normal course of an investigation or prosecution.

2. Communications with a local, state, or federal law enforcement or prosecutorial authority.

3. Communications made to the attorney of an investigator, prosecutor, employee, or member of the commission or to a person or the attorney of a person who is investigated or prosecuted by the commission.

History: 1973 c. 334; 1975 c. 85, 93, 199; 1977 c. 427, 447; 1979 c. 89, 249, 260, 311, 357; 1983 a. 183 s. 45; 1983 a. 192 s. 304; 1983 a. 484 ss. 135, 172 (3), 174; 1983 a. 491; 1985 a. 304; 1987 a. 391; 1989 a. 192; 1991 a. 316; 1999 a. 49; 2001 a. 16; 2003 a. 265; 2005 a. 451; 2007 a. 1; 2011 a. 23; 2013 a. 159; 2015 a. 117; 2015 a. 118 ss. 130, 266 (10).

Sub. (5) does not apply to district attorneys or law enforcement agencies. It only applies to the government accountability board, its employees and agents, and the investigators and prosecutors retained by the board, and the assistants to those persons. OAG 7−09.

12.60 Penalties. (1) (a) Whoever violates s. 12.09, 12.11 or 12.13 (1), (2) (b) 1. to 7. or (3) (a), (e), (f), (j), (k), (L), (m), (y) or (z) is guilty of a Class I felony.

(b) Whoever violates s. 12.03, 12.05, 12.07, 12.08 or 12.13 (2) (b) 8., (3) (b), (c), (d), (g), (i), (n) to (x), (ze), (zm) or (zn) may be fined not more than $1,000, or imprisoned not more than 6 months or both.

(bm) Whoever violates s. 12.13 (5) may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(c) Whoever violates s. 12.13 (3) (am) may be required to forfeit not more than $500.

(d) Whoever violates s. 12.035 or 12.13 (3) (h) may be required to forfeit not more than $100.

(2) (a) If a successful candidate for public office, other than a candidate for the legislature or a candidate for national office, is adjudged guilty in a criminal action of any violation of this chapter under sub. (1) (a) committed during his or her candidacy, the court shall after entering judgment enter a supplemental judgment declaring a forfeiture of the candidate's right to office. The supplemental judgment shall be transmitted to the officer or agency authorized to issue the certificate of nomination or election to the office for which the person convicted is a candidate. If the candidate's term has begun, the office shall become vacant. The office shall then be filled in the manner provided by law.

(b) If a successful candidate for the legislature or U.S. congress is adjudged guilty in a criminal action of any violation of this chapter under sub. (1) (a) committed during his or her candidacy, the court shall after entering judgment certify its findings to the presiding officer of the legislative body to which the candidate was elected.

(3) Any election official who is convicted of any violation of this chapter shall, in addition to the punishment otherwise provided, be disqualified to act as an election official for a term of 5 years from the time of conviction.

(4) Prosecutions under this chapter shall be conducted in accordance with s. 11.1401 (2).

History: 1973 c. 334; 1975 c. 85; 1977 c. 418 s. 924 (18) (e); 1977 c. 427; 1979 c. 249, 311, 328; 1983 a. 484; 1985 a. 304; 1997 a. 283; 1999 a. 49; 2001 a. 109; 2005 a. 451; 2007 a. 1; 2015 a. 117.