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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4772

03/11/2024 Authored by Freiberg
The bill was read for the first time and referred to the Committee on Elections Finance and Policy

1.1 A bill for an act
1.2 relating to elections; modifying the authority of the Campaign Finance and Public
1.3 Disclosure Board to impose a civil penalty and late fees; expanding the definition
1.4 of electioneering communication to include communications disseminated digitally
1.5 online or by electronic means to a recipient's telephone or other personal device;
1.6 modifying the definition of major political party; amending Minnesota Statutes
1.7 2022, section 10A.27, subdivision 17; Minnesota Statutes 2023 Supplement,
1.8 sections 10A.20, subdivision 12; 10A.201, subdivisions 3, 4, 6, 9; 200.02,
1.9 subdivision 7; repealing Minnesota Statutes 2023 Supplement, section 10A.201,
1.10 subdivision 11.

1.11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.12 Section 1. Minnesota Statutes 2023 Supplement, section 10A.20, subdivision 12, is
1.13 amended to read:

1.14 Subd. 12. Failure to file; late fees; penalty. (a) If an individual or association fails to
1.15 file a report required by this section or section 10A.202, the board may impose a late filing
1.16 fee and a civil penalty as provided in this subdivision.

1.17 (b) ~~If an individual or association~~ a candidate, political committee, political fund, principal
1.18 campaign committee, or party unit fails to file a report required by this section that is due
1.19 January 31, the board may impose a late filing fee of \$25 per day, not to exceed \$1,000,
1.20 commencing the day after the report was due.

1.21 (c) Except for reports governed by paragraph (b), if an individual, political committee,
1.22 political fund, principal campaign committee, party unit, or association fails to file a report
1.23 required by subdivision 2, 2a, or 5, or by section 10A.202, the board may impose a late
1.24 filing fee of \$50 per day, not to exceed \$1,000, commencing on the day after the date the
1.25 statement was due, provided that, If the total receipts received expenditures or disbursements

2.1 that occurred during the reporting period ~~or total expenditure reportable under section~~
 2.2 ~~10A.202~~ exceeds \$25,000, then the board may also impose a late filing fee of up to two
 2.3 percent of the ~~amount~~ expenditures or disbursements that should have been reported, per
 2.4 day, commencing on the day after the report was due, not to exceed 100 percent of the
 2.5 amount that should have been reported.

2.6 (d) If an individual, political committee, political fund, principal campaign committee,
 2.7 party unit, or association has been assessed a late filing fee or civil penalty under this
 2.8 subdivision during the prior four years, the board may impose a late filing fee, a civil penalty,
 2.9 or both, of up to twice the amount otherwise authorized by this subdivision. If an individual,
 2.10 political committee, political fund, principal campaign committee, party unit, or association
 2.11 has been assessed a late filing fee under this subdivision more than two times during the
 2.12 prior four years, the board may impose a late filing fee of up to three times the amount
 2.13 otherwise authorized by this subdivision.

2.14 (e) Within ten business days after the report was due or receipt by the board of
 2.15 information disclosing the potential failure to file a report required by this section, the board
 2.16 must send notice by certified mail that the individual or association may be subject to a civil
 2.17 penalty for failure to file the report. An individual who fails to file the report within seven
 2.18 days after the certified mail notice was sent by the board is subject to a civil penalty imposed
 2.19 by the board of up to ~~\$1,000~~ \$2,000 in addition to the late filing fees imposed by this
 2.20 subdivision.

2.21 **EFFECTIVE DATE.** This section is effective July 1, 2024, and applies to penalties
 2.22 assessed on or after that date.

2.23 Sec. 2. Minnesota Statutes 2023 Supplement, section 10A.201, subdivision 3, is amended
 2.24 to read:

2.25 Subd. 3. ~~Can be received by 10,000 or more individuals~~ Targeted to the relevant
 2.26 electorate. (a) ~~"Can be received by 10,000 or more individuals"~~ "Targeted to the relevant
 2.27 electorate" means that a communication can be received in the district the candidate seeks
 2.28 to represent, in the case of a candidate for representative, senator, or other office represented
 2.29 by district; or in the entire state, if the candidate seeks a statewide office, as follows:

2.30 (1) in the case of a communication transmitted by an FM radio broadcast station or
 2.31 network, where the district lies entirely within the station's or network's protected or primary
 2.32 service contour, that the population of the district is 10,000 or more;

3.1 (2) in the case of a communication transmitted by an FM radio broadcast station or
 3.2 network, where a portion of the district lies outside of the protected or primary service
 3.3 contour, that the population of the part of the district lying within the station's or network's
 3.4 protected or primary service contour is 10,000 or more;

3.5 (3) in the case of a communication transmitted by an AM radio broadcast station or
 3.6 network, where the district lies entirely within the station's or network's most outward service
 3.7 area, that the population of the district is 10,000 or more;

3.8 (4) in the case of a communication transmitted by an AM radio broadcast station or
 3.9 network, where a portion of the district lies outside of the station's or network's most outward
 3.10 service area, that the population of the part of the district lying within the station's or
 3.11 network's most outward service area is 10,000 or more;

3.12 (5) in the case of a communication appearing on a television broadcast station or network,
 3.13 where the district lies entirely within the station's or network's Grade B broadcast contour,
 3.14 that the population of the district is 10,000 or more;

3.15 (6) in the case of a communication appearing on a television broadcast station or network,
 3.16 where a portion of the district lies outside of the Grade B broadcast contour:

3.17 (i) that the population of the part of the district lying within the station's or network's
 3.18 Grade B broadcast contour is 10,000 or more; or

3.19 (ii) that the population of the part of the district lying within the station's or network's
 3.20 broadcast contour, when combined with the viewership of that television station or network
 3.21 by cable and satellite subscribers within the district lying outside the broadcast contour, is
 3.22 10,000 or more;

3.23 (7) in the case of a communication appearing exclusively on a cable or satellite television
 3.24 system, but not on a broadcast station or network, that the viewership of the cable system
 3.25 or satellite system lying within a district is 10,000 or more; ~~or~~

3.26 (8) in the case of a communication appearing on a cable television network, that the
 3.27 total cable and satellite viewership within a district is 10,000 or more; or

3.28 (9) in the case of an email blast, a text message blast, a telephone bank, or a qualifying
 3.29 paid digital advertisement or communication, that the communication is capable of being
 3.30 received by 2,500 or more individuals in a district.

3.31 (b) Cable or satellite television viewership is determined by multiplying the number of
 3.32 subscribers within a district, or a part thereof, as appropriate, by the current average
 3.33 household size for Minnesota, as determined by the Bureau of the Census.

4.1 (c) A determination that a communication can be received by 10,000 or more individuals
 4.2 based on the application of the formula in this section shall create a rebuttable presumption
 4.3 that may be overcome by demonstrating that:

4.4 (1) one or more cable or satellite systems did not carry the network on which the
 4.5 communication was publicly distributed at the time the communication was publicly
 4.6 distributed; and

4.7 (2) applying the formula to the remaining cable and satellite systems results in a
 4.8 determination that the cable network or systems upon which the communication was publicly
 4.9 distributed could not be received by 10,000 individuals or more.

4.10 **EFFECTIVE DATE.** This section is effective and applies to communications
 4.11 disseminated on or after that date.

4.12 Sec. 3. Minnesota Statutes 2023 Supplement, section 10A.201, subdivision 4, is amended
 4.13 to read:

4.14 Subd. 4. **Direct costs of producing or airing electioneering communications.** "Direct
 4.15 costs of producing or airing electioneering communications" means:

4.16 (1) costs charged by a vendor, including studio rental time, staff salaries, costs of video
 4.17 or audio recording media, and talent; ~~and~~

4.18 (2) the cost of airtime on broadcast, cable, or satellite radio and television stations, studio
 4.19 time, material costs, and the charges for a broker to purchase the airtime; and

4.20 (3) the cost to access any platform used to disseminate messages digitally online or by
 4.21 electronic means to a recipient's telephone or other personal device.

4.22 **EFFECTIVE DATE.** This section is effective and applies to communications
 4.23 disseminated on or after that date.

4.24 Sec. 4. Minnesota Statutes 2023 Supplement, section 10A.201, subdivision 6, is amended
 4.25 to read:

4.26 Subd. 6. **Electioneering communication.** (a) "Electioneering communication" means
 4.27 any broadcast, cable, ~~or~~ satellite, or digital communication that:

4.28 (1) refers to a clearly identified candidate for state office;

4.29 (2) is publicly distributed within 60 days before a general election for the office sought
 4.30 by the candidate; or within 30 days before a primary election, or a convention or caucus of
 4.31 a political party that has authority to nominate a candidate, for the office sought by the

5.1 candidate, and the candidate referenced is seeking the nomination of that political party;
 5.2 and

5.3 (3) is targeted to the relevant electorate.

5.4 (b) A communication is not an electioneering communication if it:

5.5 (1) is publicly disseminated through a means of communication other than a broadcast,
 5.6 cable, ~~or satellite television or radio station~~, or by digital means through an electronic device;

5.7 (2) appears in a news story, commentary, or editorial distributed through the facilities
 5.8 of any broadcast, cable, or satellite television or radio station, unless such facilities are
 5.9 owned or controlled by any political party, political committee, or candidate, provided that
 5.10 a news story distributed through a broadcast, cable, or satellite television or radio station
 5.11 owned or controlled by any political party, political committee, or candidate is not an
 5.12 electioneering communication if the news story meets the requirements described in Code
 5.13 of Federal Regulations, title 11, section 100.132 (a) and (b);

5.14 (3) constitutes an expenditure or independent expenditure, provided that the expenditure
 5.15 or independent expenditure is required to be reported under this chapter;

5.16 (4) constitutes a candidate debate or forum, or that solely promotes such a debate or
 5.17 forum and is made by or on behalf of the person sponsoring the debate or forum; or

5.18 (5) is paid for by a candidate.

5.19 Sec. 5. Minnesota Statutes 2023 Supplement, section 10A.201, subdivision 9, is amended
 5.20 to read:

5.21 Subd. 9. **Publicly distributed.** "Publicly distributed" means aired, broadcast, cablecast,
 5.22 or otherwise disseminated through the facilities of a television station, radio station, cable
 5.23 television system, ~~or satellite system~~, or disseminated in a digital format online or by other
 5.24 electronic means to a recipient's telephone or other personal device.

5.25 **EFFECTIVE DATE.** This section is effective and applies to communications
 5.26 disseminated on or after that date.

5.27 Sec. 6. Minnesota Statutes 2022, section 10A.27, subdivision 17, is amended to read:

5.28 Subd. 17. **Penalty.** (a) An association that makes a contribution under subdivision 15
 5.29 and fails to provide the required statement within the time specified is subject to a late filing
 5.30 fee of \$100 a day not to exceed \$1,000, commencing the day after the statement was due.
 5.31 The board must send notice by certified mail that the individual or association may be

6.1 subject to a civil penalty for failure to file the statement. An association that fails to provide
 6.2 the required statement within seven days after the certified mail notice was sent by the board
 6.3 is subject to a civil penalty of up to four times the amount of the contribution, but not to
 6.4 exceed \$25,000, ~~except when the violation was intentional.~~

6.5 (b) An independent expenditure political committee or an independent expenditure
 6.6 political fund that files a report without including the statement required under subdivision
 6.7 15 is subject to a late filing fee of \$100 a day not to exceed \$1,000, commencing the day
 6.8 after the report was due. The board must send notice by certified mail that the independent
 6.9 expenditure political committee or independent expenditure fund may be subject to a civil
 6.10 penalty for failure to file the statement. An association that fails to provide the required
 6.11 statement within seven days after the certified mail notice was sent by the board is subject
 6.12 to a civil penalty of up to four times the amount of the contribution for which disclosure
 6.13 was not filed, but not to exceed \$25,000, ~~except when the violation was intentional.~~

6.14 (c) If an independent expenditure political committee or an independent expenditure
 6.15 political fund has been assessed a late filing fee under this subdivision during the prior four
 6.16 years, the board may impose a late filing fee of up to twice the amount otherwise authorized
 6.17 by this subdivision. If an independent expenditure political committee or an independent
 6.18 expenditure political fund has been assessed a late filing fee under this subdivision more
 6.19 than two times during the prior four years, the board may impose a late filing fee of up to
 6.20 three times the amount otherwise authorized by this subdivision.

6.21 ~~(e)~~ (d) No other penalty provided in law may be imposed for conduct that is subject to
 6.22 a civil penalty under this section.

6.23 Sec. 7. Minnesota Statutes 2023 Supplement, section 200.02, subdivision 7, is amended
 6.24 to read:

6.25 Subd. 7. **Major political party.** (a) "Major political party" means a political party that
 6.26 maintains a party organization in the state; has complied with the party's constitution and
 6.27 rules; is in compliance with the requirements of sections 202A.12 and 202A.13; files with
 6.28 the secretary of state no later than December 1 of each odd-numbered year a certification
 6.29 that the party has met the foregoing requirements, including a list of the dates and locations
 6.30 of each convention held; and meets all other qualification requirements of this subdivision.

6.31 (b) A political party qualifies as a major political party by:

6.32 (1) presenting at least one candidate for election to the office of:

7.1 (i) governor and lieutenant governor, secretary of state, state auditor, or attorney general
7.2 at the last preceding state general election for those offices; or

7.3 (ii) presidential elector or U.S. senator at the last preceding state general election for
7.4 presidential electors; and

7.5 whose candidate received votes in each county in that election and received votes from ~~not~~
7.6 ~~less than five percent of the total number of individuals who voted in that election, if the~~
7.7 ~~state general election was held on or before November 8, 2022, or not less than eight percent~~
7.8 ~~of the total number of individuals who voted in that election, at a state general election held~~
7.9 ~~on or after November 7, 2024;~~

7.10 (2) presenting at least 45 candidates for election to the office of state representative, 23
7.11 candidates for election to the office of state senator, four candidates for election to the office
7.12 of representative in Congress, and one candidate for election to each of the following offices:
7.13 governor and lieutenant governor, attorney general, secretary of state, and state auditor, at
7.14 the last preceding state general election for those offices; or

7.15 (3) presenting to the secretary of state at any time before the close of filing for the state
7.16 partisan primary ballot a petition for a place on the state partisan primary ballot, which
7.17 petition contains valid signatures of a number of the party members equal to at least five
7.18 percent of the total number of individuals who voted in the preceding state general election.
7.19 A signature is valid only if signed no more than one year prior to the date the petition was
7.20 filed.

7.21 (c) A political party whose candidate receives a sufficient number of votes at a state
7.22 general election described in paragraph (b), clause (1), or a political party that presents
7.23 candidates at an election as required by paragraph (b), clause (2), becomes a major political
7.24 party as of January 1 following that election. A political party that complies with paragraph
7.25 (a) retains its major party status for at least two state general elections even if the party fails
7.26 to present a candidate who receives the number and percentage of votes required under
7.27 paragraph (b), clause (1), or fails to present candidates as required by paragraph (b), clause
7.28 (2), at subsequent state general elections.

7.29 (d) A major political party whose candidates fail to receive the number and percentage
7.30 of votes required under paragraph (b), clause (1), and that fails to present candidates as
7.31 required by paragraph (b), clause (2), at each of two consecutive state general elections
7.32 described by paragraph (b), clause (1) or (2), respectively, loses major party status as of
7.33 December 31 following the later of the two consecutive state general elections.

8.1 (e) A major political party that does not submit the certification required by this
8.2 subdivision loses major party status on December 31 of the year in which the party did not
8.3 file the certification.

8.4 (f) The secretary of state must notify the chair of the major political party, the
8.5 commissioner of revenue, and the Campaign Finance and Public Disclosure Board if the
8.6 political party's status is changed pursuant to this section.

8.7 **EFFECTIVE DATE.** This section is effective August 1, 2024.

8.8 Sec. 8. **REPEALER.**

8.9 Minnesota Statutes 2023 Supplement, section 10A.201, subdivision 11, is repealed.

8.10 **EFFECTIVE DATE.** This section is effective and applies to communications
8.11 disseminated on or after that date.

10A.201 ELECTIONEERING COMMUNICATIONS; DEFINITIONS.

Subd. 11. **Targeted to the relevant electorate.** "Targeted to the relevant electorate" means the communication can be received by 10,000 or more individuals:

- (1) in the district the candidate seeks to represent, in the case of a candidate for representative, senator, or other office represented by district; or
- (2) in the entire state, if the candidate seeks a statewide office.