CHAPTER 211C - RECALL OF ELECTED STATE OFFICIALS

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211C.01 DEFINITIONS.

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

Subd. 2. **Malfeasance.** "Malfeasance" means the intentional commission of an unlawful or wrongful act by a state officer other than a judge in the performance of the officer's duties that is substantially outside the scope of the authority of the officer and that substantially infringes on the rights of any person or entity.

Subd. 3. **Nonfeasance.** "Nonfeasance" means the intentional, repeated failure of a state officer other than a judge to perform specific acts that are required duties of the officer.

Subd. 4. **Serious crime.** (a) "Serious crime" means a crime that is punished as a gross misdemeanor, as defined in section 609.02, and that involves assault, intentional injury or threat of injury to person or public safety, dishonesty, stalking, aggravated driving while intoxicated, coercion, obstruction of justice, or the sale or possession of controlled substances.

(b) "Serious crime" also means a crime that is punished as a misdemeanor, as defined in section 609.02, and that involves assault, intentional injury or threat of injury to person or public safety, dishonesty, coercion, obstruction of justice, or the sale or possession of controlled substances.

Subd. 5. **State officer.** "State officer" means an individual occupying an office subject to recall under the Minnesota Constitution, article VIII, section 6.

History: *1996 c 469 art 2 s 2*

NOTES AND DECISIONS

211C.01

Allegation of nonfeasance in performance of official duties by Secretary of State in relation to filing of oaths of office of members of legislature by filing them with chief clerk of House of Representatives and the Secretary of the Senate instead of with Secretary of State, and by refusing request to inspect oaths, failed to allege specific facts constituting grounds for recall. *In re Proposed Petition to Recall Kiffmeyer*, 673 N.W.2d 827 (Minn. 2004)

Proposed petition to recall Attorney General for allegedly failing to defend constitutionality of state sodomy statute presented claim of nonfeasance, even though language of petition indicated claim of both nonfeasance and malfeasance. *In re Proposed Petition to Recall Hatch,* 628 N.W.2d 125 (Minn. 2001).

211C.02 GROUNDS.

The grounds for recall of a judge shall be established by the supreme court. A state officer other than a judge may be subject to recall for serious malfeasance or nonfeasance during the term of office in the performance of the duties of the office or conviction during the term of office for a serious crime.

History: *1996 c 469 art 2 s 3*

NOTES AND DECISIONS

211C.02

Allegation that Governor committed nonfeasance in filing an oath of office while a member of the legislature prior to his election as governor failed to allege specific facts constituting grounds for recall of Governor. *In re Proposed Petition to Recall Pawlenty*, 673 N.W.2d 829 (Minn. 2004).

Allegation that there were legal defects in wording of oath of office signed by Secretary of State failed to allege specific facts constituting grounds for recall. *In re Proposed Petition to Recall Kiffmeyer*, 673 N.W.2d 827 (Minn. 2004).

Allegations of failure in an elected state officer's duties "as a lawyer" are not valid grounds for the officer's recall. *In re Proposed Petition to Recall Hatch*, 628 N.W.2d 125 (Minn. 2001).

211C.03 PETITION FOR RECALL; FORM AND CONTENT.

The secretary of state shall prescribe by rule the form required for a recall petition. Each page of the petition must contain the following information:

(1) the name and office held by the state officer who is the subject of the recall petition and, in the case of a representative, senator, or district judge, the district number in which the state officer serves;

(2) the specific grounds upon which the state officer is sought to be recalled and a concise, accurate, and complete synopsis of the specific facts that are alleged to warrant recall on those grounds;

(3) a statement that a recall election, if conducted, will be conducted at public expense;

(4) a statement that persons signing the petition:

(i) must be eligible voters residing within the district where the state officer serves or, in the case of a statewide officer, within the state;

(ii) must know the purpose and content of the petition; and

(iii) must sign of their own free will and may sign only once; and

(5) a space for the signature and signature date; printed first, middle, and last name; residence address, including municipality and county; and date of birth of each signer.

The secretary of state shall make available sample recall petition forms upon request.

History: *1996 c 469 art 2 s 4*

211C.04 PROPOSED PETITION; SUBMITTAL.

A petition to recall a state officer may be proposed by 25 or more persons, who must be eligible to sign and shall sign the proposed petition for the recall of the officer. The persons submitting the petition must designate in writing no more than three individuals among them to represent all petitioners in matters relating to the recall. The proposed petition must be submitted to the secretary of state in the manner and form required by the secretary of state and be accompanied by a fee of $100. After the secretary of state issues a petition to recall a state officer under section 211C.06, the secretary of state may not accept a proposed petition to recall the same officer until either the earlier petition is dismissed by the secretary of state for a deficiency of signatures under section 211C.06, or the recall election brought about by the earlier

petition results in the officer retaining the office. Upon receiving a proposed petition that satisfies the requirements of this section, the secretary of state shall immediately notify in writing the state officer named and forward the proposed petition to the clerk of the appellate courts for action under section 211C.05.

History: *1996 c 469 art 2 s 5*

211C.05 SUPREME COURT REVIEW OF PROPOSED PETITION.

Subdivision 1. **Assignment for hearing.** Upon receiving a proposed petition from the secretary of state, the clerk of the appellate courts shall submit it immediately to the chief justice of the supreme court, or, if the chief justice is the subject of the proposed petition, to the most senior associate justice of the supreme court. The persons proposing the petition shall provide to the reviewing judge any materials supporting the petition. The officer who is named in the proposed petition may submit materials in opposition. The justice, or a designee if the justice has a conflict of interest or is unable to conduct the review in a timely manner, shall review the proposed petition to determine whether it alleges specific facts that, if proven, would constitute grounds for recall of the officer under the Minnesota Constitution, article VIII, section 6, and section 211C.02. If it does not, the justice shall immediately issue an order dismissing the petition and indicating the reason for dismissal. If the proposed petition does allege specific facts that, if proven, would constitute grounds for recall, the justice shall assign the case to a special master for a public hearing. The special master must be an active or retired judge. The justice shall complete the review under this section and dismiss the proposed petition or assign the case for hearing within ten days.

Subd. 2. **Hearing; report.** A public hearing on the allegations of a proposed petition must be held within 21 days after issuance of the order of the justice assigning the case to a special master. The special master shall report to the court within seven days after the end of the public hearing. In the report, the special master shall determine:

(1) whether the persons proposing the petition have shown by a preponderance of the evidence that the factual allegations supporting the petition are true; and

(2) if so, whether the persons proposing the petition have shown that the facts found to be true are sufficient grounds for issuing a recall petition.

If the special master determines that these standards have been met, the report must include a statement of the specific facts and grounds for the recall petition.

Subd. 3. **Supreme court; decision.** The supreme court shall review the report of the special master and make a decision on the petition within 20 days. If the court decides that the standard expressed in subdivision 2 has not been met, the court shall dismiss the petition. If the court decides that the standard for decision expressed in subdivision 2 has been met, the court shall prescribe, by order to the secretary of state, the statement of the specific facts and grounds that must appear on the petition for recall issued under section 211C.06. If the court dismisses a petition under this section because the persons proposing the petition have acted in bad faith in violation of section 211C.09, the court may assess the persons proposing the petition for reasonable costs of conducting the proceeding.

History: *1996 c 469 art 2 s 6*

211C.06 ISSUING, CIRCULATING, AND VERIFYING PETITION.

Upon receipt of the order from the supreme court, the secretary of state shall issue a recall petition. When the required number of signatures on the petition have been secured, the petition may be filed with the secretary of state. The petition must be filed within 90 days after the date of issuance. Upon the filing of the petition, the secretary of state shall verify the number and eligibility of signers in the manner provided by the secretary of state. If the secretary of state determines that a petition has been signed by a sufficient number of eligible voters, the secretary of state shall certify the petition and immediately notify in writing the governor, the petitioners, and the state officer named in the petition. If the petition is not signed by a sufficient number of eligible voters, the secretary of state shall dismiss the petition.

History: *1996 c 469 art 2 s 7*

211C.07 GOVERNOR; WRIT OF ELECTION; ELECTION.

Within five days of receiving certification of a petition under section 211C.06, the governor shall issue a writ calling for a recall election, unless the election cannot be held before the deadline specified in the Minnesota Constitution, article VIII, section 6. A recall election must be conducted, and the results canvassed and returned, in the manner provided by law for the state general election.

History: *1996 c 469 art 2 s 8*

211C.08 ELECTION RESULT; REMOVAL FROM OFFICE.

If a majority of the votes cast in a recall election favor the removal of the state officer, upon certification of that result the state officer is removed from office and the office is vacant.

History: *1996 c 469 art 2 s 9*

211C.09 RECALL PETITION; CORRUPT PRACTICES.

A person proposing a petition may not allege any material fact in support of the petition that the person knows is false or has alleged with reckless disregard of whether it is false. A person may not intentionally make any false entry on a petition or aid, abet, counsel, or procure another to do so. A person may not use threat, intimidation, coercion, or other corrupt means to interfere or attempt to interfere with the right of any eligible voter to sign or not to sign a recall petition of their own free will. A person may not, for any consideration, compensation, gift, reward, or thing of value or promise thereof, sign or not sign a recall petition.

The supreme court may dismiss a proposed petition for violation of this section. Notwithstanding section 645.241, the sole remedy for a violation of this section is dismissal of the petition by the supreme court.

History: *1996 c 469 art 2 s 10*