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The bill was read for the first time and referred to the Committee on Governmental Operations, Reform, Technology and Elections

A bill for an act

relating to negative campaign advertising and elections; establishing a voluntary Clean Campaign Council, a clean campaign pledge, and a clean campaign advertising code; clarifying definitions of campaign expenditures and independent expenditures; clarifying requirements for disclaimers on campaign material; amending Minnesota Statutes 2006, sections 10A.01, subdivisions 9, 18; 10A.14, subdivision 2; 10A.24, by adding a subdivision; 211B.04; proposing coding for new law in Minnesota Statutes, chapter 10A.

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

Section 1. Minnesota Statutes 2006, section 10A.01, subdivision 9, is amended to read:

Subd. 9. **Campaign expenditure.** (a) "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

(b) "Expenditure" includes a cost incurred to design, produce, or disseminate a communication if the communication contains words such as "vote for," "reelect," "(name of candidate) for (office)," "vote against," "defeat," or another phrase or campaign slogan that in context can have no reasonable meaning other than to advocate support for or opposition to the nomination or election of one or more clearly identified candidates.

(c) "Expenditure" is presumed to include a cost incurred to design, produce, or disseminate a communication if the communication names or depicts one or more clearly identified candidates; is disseminated during the 45 days before a primary election, during the 60 days before a general election, or during a special election cycle until election day; and costs more than the following amounts for a communication naming or depicting a candidate for the following offices:

2.1 (1) \$500 for a candidate for governor, lieutenant governor, attorney general,
 2.2 secretary of state, or state auditor; or

2.3 (2) \$100 for a candidate for state senator or representative.

2.4 An individual or association presumed under this paragraph to have made an
 2.5 expenditure may rebut the presumption by an affidavit signed by the spender and filed with
 2.6 the board stating that the cost was not incurred with intent to influence the nomination,
 2.7 election, or defeat of any candidate, supported by any additional evidence the spender
 2.8 chooses to submit. The board may consider any additional evidence it deems relevant and
 2.9 material and must determine by a preponderance of the evidence whether the cost was
 2.10 incurred with intent to influence the nomination, election, or defeat of a candidate.

2.11 (d) An expenditure is considered to be made in the year in which the candidate made
 2.12 the purchase of goods or services or incurred an obligation to pay for goods or services.

2.13 (e) An expenditure made for the purpose of defeating a candidate is considered
 2.14 made for the purpose of influencing the nomination or election of that candidate or any
 2.15 opponent of that candidate.

2.16 (f) Except as provided in paragraph (g), clause (1), "expenditure" includes the dollar
 2.17 value of a donation in kind.

2.18 (g) "Expenditure" does not include:

2.19 (1) noncampaign disbursements as defined in subdivision 26;

2.20 (2) services provided without compensation by an individual volunteering personal
 2.21 time on behalf of a candidate, ballot question, political committee, political fund, principal
 2.22 campaign committee, or party unit; ~~or~~

2.23 (3) the publishing or broadcasting of news items or editorial comments by the news
 2.24 media, if the news medium is not owned by or affiliated with any candidate or principal
 2.25 campaign committee; or

2.26 (4) a cost incurred by an association for a communication targeted to inform solely
 2.27 its own dues-paying members of the association's position on a candidate.

2.28 Sec. 2. Minnesota Statutes 2006, section 10A.01, subdivision 18, is amended to read:

2.29 Subd. 18. **Independent expenditure.** (a) "Independent expenditure" means an
 2.30 expenditure expressly advocating the election or defeat of a clearly identified candidate,
 2.31 if the expenditure that is made without the express or implied consent, authorization, or
 2.32 cooperation of, and not in concert with or at the request or suggestion of, any candidate or
 2.33 any candidate's principal campaign committee or agent. An independent expenditure is
 2.34 not a contribution to that candidate. ~~An expenditure by a political party or political party~~

3.1 ~~unit in a race where the political party has a candidate on the ballot is not an independent~~
3.2 ~~expenditure.~~

3.3 (b) An expenditure is presumed to be not independent if, for example:

3.4 (1) in the same election cycle in which the expenditure occurs, the spender or
3.5 the spender's agent retains the professional services of an individual or entity that, in a
3.6 nonministerial capacity, provides or has provided campaign-related service, including
3.7 polling or other campaign research, media consulting or production, direct mail, or
3.8 fund-raising, to a candidate supported by the spender for nomination or election to the
3.9 same office as any candidate whose nomination or election the expenditure is intended to
3.10 influence or to a political party working in coordination with the supported candidate;

3.11 (2) the expenditure pays for a communication that disseminates, in whole or in
3.12 substantial part, a broadcast or written, graphic, or other form of campaign material
3.13 designed, produced, or distributed by the candidate or the candidate's principal campaign
3.14 committee or their agents;

3.15 (3) the expenditure is based on information about the candidate's electoral campaign
3.16 plans, projects, or needs that is provided by the candidate or the candidate's principal
3.17 campaign committee or their agents directly or indirectly to the spender or the spender's
3.18 agent, with an express or tacit understanding that the spender is considering making
3.19 the expenditure;

3.20 (4) before the election, the spender or the spender's agent informs a candidate
3.21 or the principal campaign committee or agent of a candidate for the same office as a
3.22 candidate clearly identified in a communication paid for by the expenditure about the
3.23 communication's contents; timing, location, mode, or frequency of dissemination; or
3.24 intended audience; or

3.25 (5) in the same election cycle in which the expenditure occurs, the spender or the
3.26 spender's agent is serving or has served in an executive, policy-making, fund-raising,
3.27 or advisory position with the candidate's campaign or has participated in strategic or
3.28 policy-making discussions with the candidate's campaign relating to the candidate's
3.29 pursuit of nomination or election to office and the candidate is pursuing the same office as
3.30 a candidate whose nomination or election the expenditure is intended to influence.

3.31 An individual or association presumed under this paragraph to have made an
3.32 expenditure that was not independent may rebut the presumption by an affidavit signed by
3.33 the spender and filed with the board stating that the expenditure was made without the
3.34 express or implied consent, authorization, or cooperation of, and not in concert with
3.35 or at the request or suggestion of, any candidate or any candidate's principal campaign
3.36 committee or agent, supported by any additional evidence the spender chooses to submit.

4.1 The board may consider any additional evidence it deems relevant and material and must
 4.2 determine by a preponderance of the evidence whether the expenditure was independent.

4.3 (c) An expenditure by anyone other than a principal campaign committee that does
 4.4 not qualify as an independent expenditure under this subdivision is deemed to be an
 4.5 approved expenditure under subdivision 4.

4.6 Sec. 3. Minnesota Statutes 2006, section 10A.14, subdivision 2, is amended to read:

4.7 Subd. 2. **Form.** The statement of organization must include:

4.8 (1) the name and address of the committee, fund, or party unit;

4.9 (2) the name and address of the chair of a political committee, principal campaign
 4.10 committee, or party unit;

4.11 (3) the name and address of any supporting association of a political fund;

4.12 (4) the name and address of the treasurer and any deputy treasurers;

4.13 (5) a listing of all depositories or safety deposit boxes used; and

4.14 (6) for the state committee of a political party only, a list of its party units.

4.15 For purposes of clause (1), the name of a principal campaign committee must include the
 4.16 surname of the candidate and the name of a political party unit must include the full
 4.17 name of the political party.

4.18 Sec. 4. Minnesota Statutes 2006, section 10A.24, is amended by adding a subdivision
 4.19 to read:

4.20 Subd. 3. **Termination delayed.** A political committee, political fund, principal
 4.21 campaign committee, or party unit that has made independent expenditures during an
 4.22 election cycle may not terminate until the end of the election cycle.

4.23 Sec. 5. **[10A.38] CLEAN CAMPAIGN COUNCIL.**

4.24 Subdivision 1. **Findings.** (a) The legislature finds that the political campaign process
 4.25 is being overwhelmed with intensive campaign advertising attacks by candidates, political
 4.26 parties, and outside interest groups, in which opponents are attacked with misleading or
 4.27 even false information. The democratic process needs an open, vigorous debate on issues
 4.28 and between candidates, and criticism of candidates is necessary and desirable as part
 4.29 of that vigorous debate. However, much of the current negative advertising does not
 4.30 contribute to the democratic process. These negative attacks stifle the First Amendment,
 4.31 which was designed to secure "the widest possible dissemination of information from
 4.32 diverse and antagonistic sources," and "to assure unfettered interchange of ideas for the

5.1 bringing about of political and social changes desired by the people." These negative attack
5.2 ads undermine democracy and the First Amendment in the ways set out in this subdivision.

5.3 (b) Many of the attack ads provide intentionally misleading and even false
5.4 information to voters. Flooding the public with distorted and inaccurate information from
5.5 candidates and other political organizations does not foster a vigorous debate, but drowns
5.6 out the ability of candidates, citizens, and other groups to present accurate information
5.7 on issues, visions, and priorities.

5.8 (c) Many negative attacks are designed to prevent rebuttal, coming too late for
5.9 even the best-organized campaigns to have a chance to respond. Others are designed to
5.10 prevent rebuttal by carefully targeted telephone calls or mailings so the candidate being
5.11 attacked is never even aware of the attack.

5.12 (d) Many negative attacks undermine public confidence in the democratic process
5.13 and political candidates, leaving many citizens so disgusted that they do not bother to vote.

5.14 Developing a statutory means of blocking the unfair, negative attacks that are
5.15 undermining the political process while strengthening the robust debate that is required
5.16 in a democracy is difficult at best. However, a voluntary means of discouraging the
5.17 unfair, negative attacks is desirable and necessary for a healthy democracy. Although a
5.18 voluntary means would not contain legal sanctions for violators, it could be successful
5.19 by creating social sanctions if the media and the public speak out against dirty ads and
5.20 campaign tactics.

5.21 Subd. 2. **Purpose.** This section is designed to foster the formation of a nonpartisan,
5.22 nonprofit council that would create a voluntary code to discourage unfair, negative attacks
5.23 while encouraging a robust debate on issues and candidates.

5.24 Subd. 3. **Task force.** The campaign finance and public disclosure board must
5.25 convene a task force whose goal is to establish a Clean Campaign Council modeled on the
5.26 Minnesota News Council. The task force may include representatives from the media,
5.27 nonprofit political "watchdog" groups, former candidates, and members of the public.
5.28 The council may request contributions from nonstate sources, such as foundations, the
5.29 media, and individuals.

5.30 Subd. 4. **Clean campaign advertising code.** (a) The council may establish a clean
5.31 campaign advertising code designed to foster fair and clean campaigns by establishing
5.32 voluntary restrictions on campaign communications to prevent smear tactics. In addition
5.33 to any other provisions of the code developed by the council, the code may include the
5.34 requirements set out in this subdivision.

5.35 (b) A campaign communication paid for or approved by the principal campaign
5.36 committee of a candidate that is in the form of a paid advertisement, billboard, mass

6.1 mailing, leaflet, or flyer that criticizes an opponent of a candidate must be limited to
6.2 statements by the candidate, not by a supporter of or surrogate for the candidate.

6.3 (c) A campaign communication criticizing an opponent of a candidate may not
6.4 contain a photo or audio or video recording of the opponent that has been distorted,
6.5 retouched, or morphed in any way. A recording must be played in real time.

6.6 (d) A campaign communication that criticizes an opponent of a candidate may not be
6.7 published in the last seven days before the primary or general election in a legislative race
6.8 or in the last five days before the primary or general election in a statewide race, except to
6.9 restate criticism published previously or to respond to criticism of the candidate by an
6.10 opponent, or a new position taken by an opponent, during that time.

6.11 Subd. 5. **Enforcement of code.** (a) A person may submit a campaign
6.12 communication to the council to determine whether it complies with the clean campaign
6.13 advertising code. During the nine months preceding the general election, the determination
6.14 should be made within 72 hours after the council receives the submission. During the last
6.15 three weeks before the primary or general election, the determination should be made
6.16 within 24 hours after the council receives the submission. The council may delegate the
6.17 determination to the staff of the council.

6.18 (b) If the communication is submitted before it is published, the council may grant
6.19 the publisher permission to display with the communication a clean campaign advertising
6.20 logo approved by the council. If the communication is submitted after it has been
6.21 published and the council determines that it violates the code, the council should notify
6.22 the person submitting it, the media, and all candidates in the race that it violates the code
6.23 and the nature of the violation.

6.24 Subd. 6. **Clean campaign pledge.** (a) The council may create a clean campaign
6.25 pledge. In addition to any other provisions of the pledge developed by the council, a
6.26 candidate who signs the pledge agrees to:

6.27 (1) abide by the clean campaign advertising code;

6.28 (2) publicly repudiate and urge voters to ignore any campaign communication in
6.29 support of the candidate, or in opposition to an opponent of the candidate, that violates the
6.30 clean campaign advertising code or that would violate the code if made by the principal
6.31 campaign committee of the candidate;

6.32 (3) not criticize an opponent in a campaign communication that is deceptive,
6.33 misleading, or taken out of context;

6.34 (4) not disseminate any campaign communication that appeals to hatred of or
6.35 discrimination against persons in classes protected by the Minnesota Human Rights Act;

7.1 (5) take full responsibility for campaign communications designed, produced, or
 7.2 disseminated by the candidate's principal campaign committee;

7.3 (6) not use push-polling or any other organized telephone calling that criticizes an
 7.4 opponent of the candidate;

7.5 (7) publicly repudiate and urge voters to ignore any push-polling or any other
 7.6 organized telephone calling that criticizes an opponent of the candidate; and

7.7 (8) participate in at least two debates, if a candidate for legislative office, or at least
 7.8 eight debates, if a candidate for statewide office.

7.9 The requirement in clause (8) applies only if one or more nonpartisan organizations that
 7.10 do not endorse or support candidates are willing to sponsor them.

7.11 (b) The council may notify the media of the candidates who have signed the clean
 7.12 campaign pledge.

7.13 (c) The council may consider a complaint that a candidate has violated the clean
 7.14 campaign pledge and issue an opinion on the complaint.

7.15 Sec. 6. Minnesota Statutes 2006, section 211B.04, is amended to read:

7.16 **211B.04 CAMPAIGN LITERATURE MUST INCLUDE DISCLAIMER.**

7.17 (a) A person who participates in the preparation or dissemination of campaign
 7.18 material other than as provided in section 211B.05, subdivision 1, that does not
 7.19 prominently include the name and address of the person or committee causing the material
 7.20 to be prepared or disseminated in a disclaimer substantially in the form provided in
 7.21 paragraph (b) or (c) is guilty of a misdemeanor.

7.22 (b) Except in cases covered by paragraph (c), the required form of disclaimer is:
 7.23 "Prepared and paid for by the committee,(address)" for material prepared
 7.24 and paid for by a principal campaign committee, or "Prepared and paid for by the
 7.25 committee,(address), in support of(insert name of candidate or ballot
 7.26 question)" for material prepared and paid for by a person or committee other than a
 7.27 principal campaign committee. The committee name given in the disclaimer for a
 7.28 committee that is registered with the Campaign Finance and Public Disclosure Board must
 7.29 be its full name as registered with the board.

7.30 (c) In the case of broadcast media, the required form of disclaimer is: "Paid for by
 7.31 the committee."

7.32 (d) Campaign material that is not circulated on behalf of a particular candidate
 7.33 or ballot question must also include in the disclaimer either that it is "in opposition to
 7.34(insert name of candidate or ballot question.....)"; or that "this publication is not
 7.35 circulated on behalf of any candidate or ballot question."

8.1 (e) This section does not apply to objects stating only the candidate's name and
8.2 the office sought, fund-raising tickets, or personal letters that are clearly being sent by
8.3 the candidate.

8.4 (f) This section does not apply to an individual or association who acts independently
8.5 of any candidate, candidate's committee, political committee, or political fund and spends
8.6 only from the individual's or association's own resources a sum that is less than ~~\$500~~
8.7 \$1,000 in the aggregate to produce or distribute campaign material that is distributed at
8.8 least ~~seven~~ five days before the election to which the campaign material relates.

8.9 (g) This section does not modify or repeal section 211B.06.