

## **CHAPTER 44-09 REMOVAL BY IMPEACHMENT**

### **44-09-01. Impeachments - Reasons - Officers subject.**

The governor and other state and judicial officers of the state, except municipal judges, are subject to impeachment, and may be impeached for habitual drunkenness, crimes, corrupt conduct, malfeasance, or misdemeanor in office. The articles of impeachment may contain charges and specifications, or either, predicated upon or on account of any crime, corrupt conduct, malfeasance, or misdemeanor in office committed by the accused during any previous term of the same office.

### **44-09-02. Commencement - Trial - Presiding officer.**

The sole power of impeachment is vested in the house of representatives. A concurrence of a majority of all members is necessary to the exercise thereof. All impeachments must be tried by the senate sitting for that purpose, and the senators must be upon oath or affirmation to do justice according to law and the evidence. When the governor or lieutenant governor is on trial, the chief justice of the supreme court shall preside, or if the chief justice is disqualified or unable to preside, then some other judge of said court must be selected by the senate. No person may be convicted without the concurrence of two-thirds of the senators elected.

### **44-09-03. Impeachment - Origination - Prosecution - Articles.**

Every impeachment must be originated by resolution adopted by the house of representatives and the prosecution thereof conducted by at least five managers selected therefor by the house. Such managers or a committee of the house must prepare the articles of impeachment in accordance with the resolution of the house and submit them to the house for approval. When approved the managers must present the same at the bar of the senate and immediately deliver them to the presiding officer thereof. The house may authorize the managers to employ counsel to assist them in the preparation and prosecution of the articles of impeachment.

### **44-09-04. Form of articles of impeachment - Specifications.**

The articles of impeachment must be divided into separate charges and specifications thereunder. The charges must be numbered consecutively and separately and each must set forth in a general way the facts claimed to constitute one of the offenses named in section 44-09-01. The specifications under each charge must follow it immediately and be numbered consecutively. Each must set forth the facts claimed to constitute an offense of the kind named in the charge under which it is placed. There may be as many charges and as many specifications under each as the circumstances may require. No objection may be made on account of the form of the articles of impeachment, and the same must be deemed sufficient in substance if the allegations enable the accused to understand the nature of the accusations against the accused, and enable the accused to make a defense.

### **44-09-05. Day for hearing - Notice to accused.**

The senate, whenever articles of impeachment are presented to it by or on behalf of the house of representatives, must assign a day for the hearing of the impeachment and inform the house thereof. The day so assigned may not be earlier in the session than that at which the completion of the business of the legislative assembly may be effected. All steps and preparations necessary may be taken and made from time to time during the session to enable the trial to begin immediately upon the completion of the business of the legislative assembly. The president of the senate or other person presiding therein must cause a copy of the articles of impeachment with a notice to answer the same, at the time and place appointed, to be served upon the accused not less than twenty days before the day set for the trial.

#### **44-09-06. Service of notice.**

The service must be made upon the accused personally, or if upon diligent inquiry the accused cannot be found within the state, the senate, upon proof of that fact, may order the notice to be served by publication or otherwise in such manner as it may deem proper. The notice as published must require the accused to appear at the specified time and place to answer the articles of impeachment. When the notice to the accused is served by publication or otherwise than personally within the state, the articles of impeachment may be served upon the accused by mail or otherwise as the senate may deem proper.

#### **44-09-07. Procedure after notice.**

If the accused does not appear, the senate, upon proof of service of the notice and articles of impeachment in any manner provided in sections 44-09-05 and 44-09-06, as the circumstances may require, of its own motion or for cause shown, may assign another day for the hearing of the accused, or may proceed in the absence of the accused to trial and judgment.

#### **44-09-08. Impeachment suspends officer.**

No officer may exercise the duties of that office after the officer has been impeached and before acquittal. Whenever upon the impeachment of an officer there is no one authorized by law to perform the duties of the office and the senate shall by resolution declare that the public service may suffer by reason thereof, the governor shall designate some suitable person to perform the duties of the office until the end of the trial upon the articles of impeachment. The person so designated shall receive the same salary, fees, and emoluments as such officer would receive if not impeached. If the accused is acquitted, the accused must be restored immediately to the office but if convicted, the office must be deemed vacant and must be filled immediately as provided by law.

#### **44-09-09. Organization of court - Powers.**

The senate and each member thereof, unless excused for cause, shall meet at the senate chamber on the day assigned to hear the impeachment and organize as a court for the trial of the same. Such organization must be held and deemed to be perfected when the presiding officer of the senate and all members thereof, not excused, have taken the oath or affirmation prescribed. No member may sit in the trial or vote upon such trial until the member has taken such oath or affirmation. The oath or affirmation must be administered by the secretary of the senate to the presiding officer thereof and by the presiding officer to each of the members of the senate. The senate sitting as a court upon the trial of an impeachment has the same power to compel the attendance of its members as when engaged in the ordinary business of legislation.

#### **44-09-10. Counsel for accused.**

If the accused appears and is unable to procure the assistance of counsel, the president of the senate, or other person presiding, shall appoint some suitable person to assist the accused in the accused's defense. If the accused is served by publication and fails to appear, the president of the senate, or other person presiding, shall appoint some person as counsel to appear in the accused's behalf and make defense for the accused.

#### **44-09-11. How accused may answer - Articles of impeachment.**

If the defendant appears, the defendant may object in writing to the sufficiency of the articles of impeachment or may answer the same in writing or by oral plea. Such plea must be entered upon the journal. A plea of not guilty puts in issue every material allegation of the articles of impeachment and the specifications thereunder.

#### **44-09-12. Objections to the articles - Procedure.**

If the accused makes objections to the sufficiency of the articles of impeachment and such objections are sustained by a majority of the members of the senate, the decision must be entered on the journal and no further proceedings may be had upon the articles. If such

objections are not sustained by a majority of the members of the senate, the accused must be ordered forthwith to answer the articles.

**44-09-13. Impeachment - Objections overruled - Further proceedings.**

If the accused, upon the overruling of the objections as provided in section 44-09-12, pleads guilty to any or all of the charges or specifications, the senate must render judgment of conviction against the accused. If the accused pleads not guilty or refuses to plead, the senate, at such time as it may appoint, must proceed to try the impeachment.

**44-09-14. Duty of secretary of senate.**

The secretary of the senate in all cases of impeachment shall keep a full and correct record of all proceedings. Said record shall be a public record. The secretary of the senate also shall have power to administer all requisite oaths and affirmations.

**44-09-15. Subordinate officers of the court of impeachment.**

The senate sitting as a court of impeachment has power, from time to time, to appoint such subordinate officers, clerks, and reporters as may be necessary for the convenient transaction and dispatch of business, and at any time may remove such officers or any of them.

**44-09-16. Process for witnesses.**

The managers selected by the house of representatives and the person impeached and that person's counsel, severally, are entitled to process for compelling the attendance of persons and witnesses or the production of papers or records required for the trial of the impeachment.

**44-09-17. Senate may make rules for trial - Subpoenas.**

The senate sitting as a court of impeachment has full power and authority to establish such rules and regulations for the trial of the accused as may be necessary, has power to adjourn from time to time, dissolve when its work is concluded, and compel obedience to its process and orders. Its process, including subpoenas, runs into every part of the state and may be served by the same officers as other process or by any person authorized by the presiding officer of the court to serve the same, and has the same force and effect as subpoenas from district courts in criminal actions.

**44-09-17.1. Depositions may be taken.**

In any impeachment trial conducted before the senate of the state of North Dakota, the testimony of any witness not a resident of the state of North Dakota and not amenable to subpoena within the state of North Dakota at the time of such trial may be taken by deposition upon the same notice, in the same manner and before any officer authorized to take depositions in civil cases in the courts of the state, upon subpoena issued by the clerk of the supreme court or the secretary of the senate, such subpoena must be issued upon the request of the prosecution or defense or the attorneys for either of them. Any such deposition when transcribed and certified by the officer taking the same must be by that officer filed with the secretary of state of the state of North Dakota, and must be held by the secretary of state, subject to examination by the board of managers, their attorneys, the impeached officer, and the impeached officer's attorneys until the time of trial when it must, upon the request of the board of managers, be delivered to the secretary of the senate. Any such deposition must be in such manner as the senate may prescribe.

**44-09-17.2. Corporations and limited liability companies to produce books and records - Penalty.**

All corporations and limited liability companies, and all officers, managers, agents, and employees of all corporations and limited liability companies, licensed or authorized to do business within this state by any licensing or supervisory authority of this state shall be required to obey all subpoenas and orders to produce issued by the authority of the board of managers at any place within the county where they may have their principal office or any other office

which may have evidence, records and documents desired by the board of managers, whether within or without the state, and in case of the failure or refusal of any such corporation or limited liability company or any of its officers, managers, agents, or servants to obey any such subpoena or order to produce, or to appear and testify under oath or affirmation concerning the matters requested, the board of managers shall forthwith make a report of the facts of such failure or refusal to the supervising or licensing authority of this state, and it shall thereupon be the mandatory duty of such supervisory or licensing authority or officer to give said corporation or limited liability company ten days' notice in writing by registered or certified mail of the authority's or officer's intention to cancel the license or authority of said corporation or limited liability company to do business within this state, and at the expiration of said ten-day period said licensing or supervisory authority shall hear evidence only upon the question of the failure or refusal to obey such subpoena or order to produce, and if the evidence shall show such refusal or failure, the license and authority of said corporation or limited liability company to do business in this state shall be forthwith canceled and revoked.

**44-09-18. Privileges of court - Imprisonment.**

The senate, while sitting as a court of impeachment, has all the powers and privileges conferred upon it by the constitution as a house of the legislative assembly or the laws passed in pursuance thereof, but imprisonment may not extend beyond the dissolution of the court of impeachment.

**44-09-19. Vote on charge - Conviction.**

The vote upon the charges and specifications must be taken by yeas and nays, beginning with the first specification under the first charge and continuing until all the specifications under the first charge have been disposed of. A vote must be taken in the same way upon each specification and all specifications and other charges in the articles of impeachment until they all are disposed of. If two-thirds of the members elected concur in favor of a conviction upon any of the charges or specifications the accused must be convicted, otherwise the accused must be acquitted.

**44-09-20. Upon conviction judgment entered by resolution.**

If the accused is convicted, the senate, at such time as it may appoint, must pronounce judgment in the form of a resolution entered upon the journal of the senate.

**44-09-21. Adoption of resolution - Judgment of senate.**

On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the senate.

**44-09-22. Extent of judgment of conviction.**

The judgment may be that the defendant be removed from office or that the defendant be removed from office and disqualified to hold any office of trust or profit in the state.

**44-09-23. Effect of judgment of conviction.**

If a judgment of conviction is given, the defendant is disqualified from exercising any of the functions of the office and from receiving the salary, fees, or emoluments thereof, and the office must be filled for the remainder of the term as upon a vacancy.

**44-09-24. Lieutenant governor impeached - Notice to house.**

If the lieutenant governor is impeached, notice of the impeachment must be given immediately to the senate by the house of representatives in order that another president may be chosen.

**44-09-25. Impeachment does not bar prosecution.**

If the offense for which the defendant is impeached or convicted is also the subject of an information or indictment, the information or indictment is not barred thereby.

**44-09-26. Court of impeachment - Compensation - Members - Counsel - Payment.**

The presiding officer, except the chief justice when presiding, and members of the senate, while sitting as a court of impeachment, and members of the house of representatives, are entitled to receive compensation and expense reimbursement as provided in section 54-03-20 and mileage expenses as provided in section 54-06-09, while attending the court of impeachment. The compensation of the secretary of the senate, sergeant-at-arms, and all subordinate officers, clerks, stenographers, and reporters of the court and counsel employed to assist the managers and counsel selected and employed by accused with respect to the accused's defense in the impeachment trial, must be such amount as must be determined upon by a vote of the members of such court; provided, however, that the amount paid to the counsel employed to assist the managers and the amount paid to the counsel employed to assist the accused must be equal. The office of management and budget, upon presentation of a certificate signed by the presiding officer and secretary of the senate, shall pay from the general fund the expense of the senate, and the compensation of the officers, clerks, stenographers, and reporters and counsel under the provisions of this chapter.

**44-09-27. Impeachment trial - Compensation of officers and witnesses - Payment.**

The same fees must be allowed to witnesses, officers, and other persons serving process or orders as are allowed for like services in criminal actions, but no fees can be demanded in advance. Such fees must be certified and paid as provided in section 44-09-26 for the payment of the senate officers, clerks, reporters, and counsel but subject to the right of the senate to disallow all fees and charges which it shall deem unreasonable or unnecessary.