

ADOPTED REGULATION OF THE

SECRETARY OF STATE

LCB File No. R031-25

EXPLANATION – Matter in *italics* is new; matter in brackets [omitted material] is material to be omitted.

AUTHORITY: § 1, NRS 281.5745; §§ 2-5, 8 and 10-13, NRS 293.124 and 293.247; §§ 6, 7 and 9, NRS 293.124, 293.247 and 293.4685.

A REGULATION relating to complaints; authorizing a person to file a complaint with the Secretary of State concerning violations of certain laws relating to elections in this State; establishing procedures for filing, reviewing and investigating such complaints; revising the process for complaints filed with the Secretary of State concerning the Help America Vote Act of 2002; repealing certain provisions relating to filing a complaint with the Secretary of State; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing federal law enacts the Help America Vote Act of 2002, Title III of which sets forth certain requirements relating to election technology and administration, including, among other things, requirements concerning voting systems, provisional voting, statewide voter registration lists, registration to vote by mail and access for congressional observers. (52 U.S.C. §§ 21081-21102) The Help America Vote Act also requires a state to maintain a state-based administrative complaint procedure which meets certain requirements for violations of Title III of the Act. (52 U.S.C. § 21112) Existing regulations, in compliance with federal law, authorize a person who believes that a violation of Title III of the Help America Vote Act has occurred, is occurring or is about to occur to file a complaint with the Office of the Secretary of State and establish a process for the filing, investigation and resolution of such a complaint. (NAC 293.500-293.560) As part of this process, existing regulations require such a complaint to be in writing, notarized and signed and sworn to by the complainant and, if one is prescribed, submitted on a form prescribed by the Secretary of State. (NAC 293.515) **Section 6** of this regulation requires the Secretary of State to prescribe the form for such a complaint and requires the form to be submitted to the Secretary of State by mail, electronic mail or facsimile.

Existing regulations require the Secretary of State or a designee of the Secretary of State to review each complaint to determine whether the complaint states a violation of Title III of the Help America Vote Act and complies with the requirements set forth in existing regulations concerning the filing and form of the complaint. If a complaint fails to state such a violation or comply with such requirements, existing regulations require the complaint to be dismissed without further action and notice of such dismissal to be provided to the complainant. (NAC 293.520) **Section 7** of this regulation provides that such a complaint may also be dismissed if a

complainant is uncooperative in the investigation of the complaint or requests the Secretary of State to close the case or withdraws his or her complaint.

If a complainant has not requested a hearing on such a complaint, existing regulations require the Secretary of State to review the complaint and any accompanying record and determine whether, by a preponderance of the evidence, a violation has occurred. (NAC 293.540) **Section 9** of this regulation: (1) requires the Secretary of State to provide a copy of the complaint to the respondent before beginning the review; (2) provides that such a review may include an investigation which includes the review of certain information and materials; (3) authorizes a complainant or respondent to designate another person to represent his or her interests in a matter subject to such review; and (4) requires, if the person designated is an attorney, the attorney to submit a letter of representation to the Secretary of State before representing the complainant or respondent.

Existing law requires the Secretary of State to serve as Chief Officer of Elections for this State and provides that, as Chief Officer, the Secretary of State is responsible for the execution and enforcement of the provisions of title 24 of NRS and all other provisions of state and federal law relating to elections in this State. (NRS 293.124) **Section 2** of this regulation authorizes a person to file a complaint with the Office of the Secretary of State if he or she believes that a violation of any provision of law that is subject to such enforcement by the Secretary of State has occurred, is occurring or is about to occur. **Sections 3-12** of this regulation establish the process for filing, investigating and resolving such a complaint by requiring the complaint to, with certain exceptions, follow the procedures set forth in existing regulations for a violation of Title III of the Help America Vote Act. **Section 9** requires a respondent who receives such a complaint to file an answer with the Secretary of State within 15 days after receiving a copy of the complaint from the Secretary of State. **Section 10** authorizes a person who has been sent a copy of a final determination concerning such a complaint to, within 15 days after the date on which the final determination was mailed, file a written objection with the Secretary of State that includes a short statement of the grounds for the objection and evidence substantiating the objection.

Existing law sets forth the Nevada Financial Disclosure Act, which: (1) requires certain candidates and public officers to file a financial disclosure statement with the Secretary of State; and (2) requires the Secretary of State to administer and interpret the Act and adopt any regulations or take any actions necessary to carry out the provisions of the Act. (NRS 281.5555-281.581) **Section 1** of this regulation: (1) authorizes a person to file a complaint if he or she believes that a violation of the Act has occurred, is occurring or is about to occur; and (2) with certain exceptions, provides that such a complaint must be filed, investigated and resolved in accordance with the procedures and deadlines set forth to file, investigate and resolve a complaint filed pursuant to **section 2**.

Existing regulations require a person who wishes to file a complaint concerning an alleged violation of a provision of title 24 of NRS to submit the complaint in writing to the Secretary of State. (NAC 293.025) **Section 13** of this regulation repeals this provision as **section 2** has established specific requirements for filing a complaint.

Section 1. Chapter 281 of NAC is hereby amended by adding thereto a new section to read as follows:

1. *A person who believes that a violation of NRS 281.5555 to 281.581, inclusive, has occurred, is occurring or is about to occur may file a complaint with the Office of the Secretary of State in accordance with the procedures and deadlines set forth for filing or refiling a complaint pursuant to section 2 of this regulation.*
2. *Except as otherwise provided in this section, a complaint filed pursuant to this section must be investigated and resolved in accordance with the procedures and deadlines set forth in NAC 293.500 to 293.560, inclusive, and section 2 of this regulation for a complaint filed pursuant to section 2 of this regulation. For the purposes of this subsection, when applying the provisions of NAC 293.500 to 293.560, inclusive, and section 2 of this regulation, the term:*

 - (a) *“Complainant” means a person who files a complaint with the Secretary of State pursuant to this section.*
 - (b) *“Respondent” means a public officer or candidate who is the subject of a complaint filed pursuant to this section.*
3. *When reviewing a complaint filed pursuant to this section, the Secretary of State or a designee thereof will review the complaint to determine whether the complaint:*

 - (a) *States a violation of the provisions of NRS 281.5555 to 281.581, inclusive; and*
 - (b) *Complies with the requirements set forth in section 2 of this regulation for filing and submitting a complaint.*
4. *A complaint filed pursuant to this section may be dismissed without further action and notice of the dismissal will be provided to a complainant if:*

 - (a) *The Secretary of State determines that the complaint fails to meet the requirements set forth in subsection 3;*

(b) *The complainant requests the Secretary of State to close the case or withdraws his or her complaint; or*

(c) *A complainant is uncooperative in the investigation or determination of his or her case. For the purposes of this paragraph, a complainant will be deemed uncooperative if he or she commits an act against a member of the Office of the Secretary of State that is punishable pursuant to NRS 199.300 or 200.481.*

5. When providing an appropriate remedy in accordance with NAC 293.545, if the Secretary of State determines that a public officer or candidate willfully failed to file a financial disclosure statement or willfully failed to file a financial disclosure statement in a timely manner pursuant to NRS 281.559, 281.561 or 281.572, the Secretary of State may cause proceedings to be instituted pursuant to NRS 281.581.

Sec. 2. Chapter 293 of NAC is hereby amended by adding thereto a new section to read as follows:

1. Unless a procedure for a complaint or challenge is otherwise provided by state or federal law, a person who believes that a violation of any provision of law that is subject to enforcement by the Secretary of State pursuant to NRS 293.124 has occurred, is occurring or is about to occur may file a complaint with the Office of the Secretary of State. A complaint filed pursuant to this section must:

(a) Be in writing on a form prescribed by the Secretary of State, signed by the complainant and submitted by mail, electronic mail or facsimile to the Secretary of State.

(b) Provide the name of each respondent known to the complainant and a concise statement of the facts of the alleged violation.

(c) Be filed in the Office of the Secretary of State:

(1) Not later than 60 days after the occurrence of the action or event that forms the basis for the complaint or for the belief of the complainant that a violation is about to occur; or

(2) Not later than 60 days after the complainant knew or, with the exercise of reasonable diligence, should have known of the action or event that forms the basis for the complaint or for the belief of the complainant that a violation is about to occur, ↳ whichever is later.

2. The complainant shall mail or deliver a copy of the complaint to each respondent known to the complainant not later than the date on which the complaint is filed.

Sec. 3. NAC 293.500 is hereby amended to read as follows:

293.500 As used in NAC 293.500 to 293.560, inclusive, *and section 2 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 293.505 and 293.510 have the meanings ascribed to them in those sections.

Sec. 4. NAC 293.505 is hereby amended to read as follows:

293.505 “Complainant” means a person who files a complaint with the Secretary of State pursuant to NAC 293.515 ~~or section 2 of this regulation, as applicable.~~

Sec. 5. NAC 293.510 is hereby amended to read as follows:

293.510 “Respondent” means a state or local election official, *candidate, employee of the State or a political subdivision of the State or other person or group of persons* against whom a complaint is filed pursuant to NAC 293.515 ~~or section 2 of this regulation, as applicable.~~

Sec. 6. NAC 293.515 is hereby amended to read as follows:

293.515 1. A person who believes that a violation of Title III of the Help America Vote Act of 2002, Public Law 107-252, 52 U.S.C. §§ 21081 to 21102, inclusive, has occurred, is

occurring or is about to occur may file a complaint *against a state or local election official* with the Office of the Secretary of State.

2. A complaint filed pursuant to subsection 1 must:

(a) Be in writing ~~H~~ *on a form prescribed by the Secretary of State*, notarized and signed and sworn to by the complainant ~~H. If~~ *and submitted by mail, electronic mail or facsimile to* the Secretary of State . ~~[prescribes a form for the complaint, the complaint must be filed on that form.]~~

(b) Provide the name of each respondent and a concise statement of the facts of the alleged violation of 52 U.S.C. §§ 21081 to 21102, inclusive.

(c) Be filed in the Office of the Secretary of State:

(1) Not later than 60 days after the occurrence of the action or event that forms the basis for the complaint or for the belief of the complainant that a violation of 52 U.S.C. §§ 21081 to 21102, inclusive, is about to occur; or

(2) Not later than 60 days after the complainant knew or, with the exercise of reasonable diligence, should have known of the action or event that forms the basis for the complaint or for the belief of the complainant that a violation of 52 U.S.C. §§ 21081 to 21102, inclusive, is about to occur,

→ whichever is later.

3. The complainant shall mail or deliver a copy of the complaint to each respondent not later than the date on which the complaint is filed.

Sec. 7. NAC 293.520 is hereby amended to read as follows:

293.520 1. The Secretary of State or a designee thereof will review each complaint filed pursuant to NAC 293.515 *and section 2 of this regulation* to determine whether the complaint:

(a) *If the complaint is filed pursuant to NAC 293.515:*

(1) States a violation of 52 U.S.C. §§ 21081 to 21102, inclusive; and

(2) *Complies with the requirements of NAC 293.515.*

(b) ~~If the complaint is filed pursuant to~~
[Complies with] If the [requirements of NAC 293.515.] complaint is filed pursuant to
section 2 of this regulation:

(1) *States a violation of a provision of law subject to enforcement by the Secretary of State pursuant to NRS 293.124; and*

(2) *Complies with the requirements of section 2 of this regulation.*

2. ~~If a complaint fails to state a violation of 52 U.S.C. §§ 21081 to 21102, inclusive, or does not comply with the requirements of NAC 293.515, the~~ A complaint ~~will~~ *filed pursuant to NAC 293.515 may* be dismissed without further action and notice of the dismissal will be provided to the complainant ~~If~~ if:

(a) *The Secretary of State determines that the complaint fails to meet the requirements set forth in paragraph (a) of subsection 1;*

(b) *The complainant requests the Secretary of State to close the case or withdraws his or her complaint; or*

(c) *The complainant is uncooperative in the investigation or determination of his or her case. For the purposes of this paragraph, a complainant will be deemed uncooperative if he or she commits an act against a member of the Office of the Secretary of State that is punishable pursuant to NRS 199.300 or 200.481.*

3. Except as otherwise provided in subsection 4, a complainant whose complaint has been dismissed pursuant to this section may refile the complaint within the time set forth in paragraph

(c) of subsection 2 of NAC 293.515 ~~H or paragraph (c) of subsection 1 of section 2 of this regulation, as applicable.~~

4. A complainant ~~whose~~ **may not more than once refile a** complaint **that** has been dismissed **pursuant to this section** for failure to state a violation of :

- (a) **A provision of** 52 U.S.C. §§ 21081 to 21102, inclusive ~~, may refile~~; or
- (b) **A provision of law subject to enforcement by** the ~~complaint only one time~~ **Secretary of State pursuant to NRS 293.124.**

Sec. 8. NAC 293.525 is hereby amended to read as follows:

293.525 1. The Secretary of State may consolidate complaints filed pursuant to NAC 293.515 **or section 2 of this regulation** if the complaints relate to the same action or event or raise a common question of law or fact. The Secretary of State will notify all interested parties if two or more complaints have been consolidated.

2. The Secretary of State will compile and maintain an official record in connection with each complaint filed pursuant to NAC 293.515 ~~H and section 2 of this regulation.~~

Sec. 9. NAC 293.540 is hereby amended to read as follows:

293.540 1. If a complainant **has filed a complaint pursuant to section 2 of this regulation or** has not requested a hearing on a complaint filed pursuant to NAC 293.515, the Secretary of State or a designee thereof will review the complaint and any accompanying record and determine **, as applicable**, whether, by a preponderance of the evidence, a violation of :

- (a) **A provision of** 52 U.S.C. §§ 21081 to 21102, inclusive ~~H~~; or
- (b) **A provision of law subject to enforcement by the Secretary of State pursuant to NRS 293.124,**

↳ has occurred, is occurring or is about to occur.

2. *Before beginning a review of a complaint pursuant to this section, the Secretary of State will provide a copy of the complaint and any supporting documents to the respondent. Within 15 days after being provided a complaint filed pursuant to section 2 of this regulation pursuant to this subsection, a respondent shall file with the Secretary of State an answer to the complaint and mail or deliver a copy of the answer to the complainant and every other person who is a party to the proceeding. If the respondent asserts an affirmative defense in his or her answer, he or she must separately state and number each affirmative defense.*

3. *If the respondent fails to file an answer within the time period set forth in subsection 2, the Secretary of State may issue a determination pursuant to NAC 293.545 based solely on the facts presented in the complaint.*

4. *A review of the complaint and any accompanying record pursuant to subsection 1 may include an investigation conducted by the Secretary of State which may include, without limitation:*

(a) Interviews and hearings conducted by the Secretary of State concerning the alleged violation; and

(b) Review by the Secretary of State of:

(1) Any applicable documents filed by the respondent with a city or county clerk, filing officer or the Secretary of State that relate to the alleged violation;

(2) Any databases that the Secretary of State is authorized to access for such a purpose that contain information relevant to the complaint;

(3) Except as otherwise provided by law, any other database or information in the possession of an agency or subdivision of this State that is provided to the Secretary of State;

(4) Except as otherwise provided by law, any other information provided to the Secretary of State by a local government, an agency of another state that is charged with the administration of elections or a federal agency that is relevant to the complaint; and

(5) Any materials provided to the Secretary of State by a complainant or respondent during the course of the review and investigation of the complaint, including, without limitation, any statements made by a witness or that identifies a witness and any other evidence that is material or relevant to the investigation.

5. A complainant or respondent may represent himself or herself or designate another person to represent his or her interests. If a complainant or respondent designates an attorney to represent his or her interests, the attorney representing the complainant or respondent shall, before representing the complainant or respondent, submit to the Secretary of State a letter of representation which provides that the attorney will be representing the complainant or respondent, as applicable, in the matter.

6. If the complaint was filed pursuant to NAC 293.515 and the Secretary of State is a respondent in the complaint, the Secretary of State will appoint an independent professionally qualified person to act as the designee pursuant to this section.

Sec. 10. NAC 293.545 is hereby amended to read as follows:

293.545 1. If the Secretary of State or a designee thereof, whether acting as a hearing officer pursuant to NAC 293.535 or reviewing a complaint pursuant to NAC 293.540, determines that a violation of *a provision of law subject to enforcement by the Secretary of State pursuant to NRS 293.124 or a provision of* 52 U.S.C. §§ 21081 to 21102, inclusive, has occurred, is occurring or is about to occur, the Secretary of State or the designee will provide the appropriate remedy, including, without limitation, an order to a respondent commanding the respondent to

take specified action or prohibiting the respondent from taking specified action, with respect to a past or future election. Such a remedy will not include an award of money damages or attorney's fees.

2. If the Secretary of State or the designee, whether acting as a hearing officer pursuant to NAC 293.535 or reviewing a complaint pursuant to NAC 293.540, determines that a violation of ***a provision of law subject to enforcement by the Secretary of State pursuant to NRS 293.124 or a provision of*** 52 U.S.C. §§ 21081 to 21102, inclusive, has not occurred, is not occurring or is not about to occur, the Secretary of State or the designee will dismiss the complaint.

3. The Secretary of State or the designee will issue a final determination on a complaint made pursuant to subsection 1 or 2 in writing. The final determination will include an explanation of the reasons for the determination and, if applicable, the remedy selected.

4. Except as otherwise provided in NAC 293.550, a final determination of the Secretary of State or the designee on a complaint will be issued within 90 days after the complaint is filed, unless the complainant consents in writing to an extension. The final determination will be:

- (a) Mailed to the complainant, each respondent and any interested person who has requested in writing to be advised of the final determination;
- (b) Posted on the website of the Secretary of State; and
- (c) Made available by the Secretary of State, upon request, to any interested person.

5. ***A person who has been issued a copy of a final determination pursuant to this section concerning a complaint filed pursuant to section 2 of this regulation may file a written objection with the Secretary of State within 15 days after the date on which the final determination was mailed. Such an objection must be accompanied by a short statement of the grounds for the objection and evidence substantiating the objection. The Secretary of State***

will insert a statement to this effect into the final determination issued by the Secretary of State.

Sec. 11. NAC 293.555 is hereby amended to read as follows:

293.555 ~~¶~~ 1. *Except as otherwise provided in subsection 2, a* final determination of the Secretary of State or a designee thereof pursuant to NAC 293.535, 293.540 or 293.545 or the final resolution of an arbitrator or arbitration panel pursuant to NAC 293.550 is not subject to appeal in any state or federal court.

2. A final determination issued by the Secretary of State or a designee thereof pursuant to NAC 293.540 or 293.545 concerning a complaint filed pursuant to section 2 of this regulation is a final order for the purposes of NRS 233B.130.

Sec. 12. NAC 293.560 is hereby amended to read as follows:

293.560 The Secretary of State will make reasonable accommodations to assist persons in using the procedures set forth in NAC 293.500 to 293.560, inclusive ~~¶ and section 2 of this regulation.~~

Sec. 13. NAC 293.025 is hereby repealed.

TEXT OF REPEALED SECTION

293.025 Submission of complaint concerning violation of provision of title 24 of NRS.

(NRS 293.124) A person who wishes to file a complaint concerning an alleged violation of any provision of title 24 of NRS must:

1. Submit the complaint in writing to the Secretary of State; and
2. Sign the complaint.

→ The complaint may include proof of the alleged violation.