

**PROPOSED REGULATION OF
THE SECRETARY OF STATE**

LCB File No. R124-11

November 22, 2011

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

AUTHORITY: §§1, 3, 4, 6-8 and 13-15, NRS 293.124 and 293.247; §2, NRS 293.124, 293.305 and 293C.297; §5, NRS 293.124, 293.1277 and 293.247; §9, NRS 293.124, 293.247 and 293.517; §10, NRS 293.124, 293.247, 293.440, 293.530 and 293.557; §11, NRS 293.124, 293.247 and 293.547; §12, NRS 293.124, 293.247, 293.507, 293.508 and 293.5235.

A REGULATION relating to elections; requiring county clerks to report certain information to the Secretary of State on election day; setting forth procedures for certain emergencies on election day; revising provisions relating to the admission of voters after the closing of polls on election day; requiring county clerks to post certain information on their websites relating to certain registered voters who sign petitions; requiring county clerks to submit plans to the Secretary of State relating to procedures for opening and closing polling places; revising provisions regarding voting; requiring persons who observe the conduct of voting at polling places to sign an acknowledgment of certain rules of conduct and wear name tags; revising provisions relating to the interpretation by the Secretary of State of “official identification;” revising provisions relating to inactive voters; revising provisions relating to written challenges; revising provisions relating to the form for applications to register to vote; clarifying registration requirements for certain nonprofits who engage in political activities; making various other changes relating to elections; and providing other matters properly relating thereto.

Section 1. Chapter 293 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. 1. *As used in NRS 293.305 and 293C.297 and NAC 293.217, a person is waiting to vote at the hour of closing the polls if the person:*

(a) Is physically in line waiting to vote;

(b) Has entered the polling place;

(c) Is in the parking lot of the polling place and is moving toward the entrance of the polling place with the intention of voting; or

(d) Is not described in paragraph (a), (b) or (c) but is otherwise determined by a member of the election board to be about to enter the polling place with the intention of voting.

2. After determining who is the last person waiting to vote at the time that the polls close, a member of the election board shall:

(a) Place a sticker or other distinguishing mark on the last person waiting in line to vote; or

(b) If the last person waiting to vote does not want a sticker or other distinguishing mark placed on him or her, physically stand behind the last person waiting in line to vote,

↳ to ensure that no other person enters the polling place to vote.

Sec. 3. On election day for each election other than a city election, the county clerk shall notify the Secretary of State of voter turnout in the county not less often than twice during the hours that polling places are open in the county.

Sec. 4. 1. Each county clerk and city clerk shall submit a plan to the Secretary of State setting forth the procedures that the clerk will use for the disposition of absent ballots in case of an emergency. Such plan must be submitted not later than 90 days before each election.

2. In the case of an emergency, the Secretary of State may order one or more polling places to be used to accommodate voters who are unable to vote at their polling places due to the emergency.

3. As used in paragraph (o) of subsection 3 of NRS 293.247, “emergency” means a temporary or permanent situation where one or more polling places located within the

jurisdiction of a county clerk or city clerk does not have a mechanical voting device that is properly recording votes electronically.

Sec. 5. NAC 293.185 is hereby amended to read as follows:

293.185 1. If, while verifying signatures pursuant to NRS 293.1277, a county clerk discovers that an address included with a signature does not match the address for the registered voter who signed the petition as indicated in the file of applications to register to vote, the clerk shall ~~notify the registered voter~~ *post on the clerk's website a notice* of the discrepancy. *The notice must include, without limitation, the name of the registered voter and information relating to how the registered voter may contact the county clerk to resolve the discrepancy.*

2. A county clerk shall not verify any signature for a person ~~who has been notified of a discrepancy pursuant to~~ *described in* subsection 1 unless the person demonstrates to the satisfaction of the clerk that the person is a registered voter of the State, county, district or municipality which is applicable for the ballot question or office that is the subject of the petition.

Sec. 6. NAC 293.217 is hereby amended to read as follows:

293.217 1. On election day for each election other than a city election, the county clerk shall notify the Secretary of State by facsimile, ~~or~~ electronic mail ~~:~~ *or other means approved by the Secretary of State:*

(a) ~~Except as otherwise provided in paragraph (b), of~~ *Of the time at which every polling place within the jurisdiction of the county clerk opened on election day. The notification required pursuant to this paragraph must be sent to the Secretary of State immediately upon the county clerk confirming that all polling places within the jurisdiction of the county clerk are open on election day.*

(b) **Of** the time at which each polling place within the jurisdiction of the county clerk opened on election day. The notification required pursuant to this paragraph must be sent to the Secretary of State as soon as practicable after the opening of all polling places within the jurisdiction of the county clerk.

~~[(b)]~~ *(c)* If the opening or closing of any polling place was delayed on that day. The notification required pursuant to this paragraph must be sent to the Secretary of State as soon as practicable after the delay occurs and include, without limitation, an explanation of the reason for the delay.

~~[(e)]~~ *(d)* Of the time at which each polling place within the jurisdiction of the county clerk closed that day and all registered voters waiting to vote at the time the polls closed have voted. The notification required pursuant to this paragraph must be sent to the Secretary of State as soon as practicable after the closing of all polling places within the jurisdiction of the county clerk.

2. If a county clerk reports a delay of an opening or closing of a polling place pursuant to paragraph ~~[(b)]~~ *(c)* of subsection 1, the county clerk shall inform the Secretary of State when the delay has been cured and the polling place has opened or closed, as the case may be. The notification required pursuant to this subsection must be sent to the Secretary of State as soon as practicable after the opening or closing, as the case may be, of the polling place.

3. A county clerk shall not report, *post or otherwise disclose* on election day any unofficial results of election returns related to a candidate for statewide or multicounty office or a statewide or multicounty ballot question until the Secretary of State:

(a) Receives the notification required pursuant to paragraph ~~[(e)]~~ *(d)* of subsection 1 from every county clerk; ~~[and]~~

(b) *Receives election results from every county clerk;*

(c) Verifies the election results; and

(d) Notifies the county clerk that the county clerk may report , post or otherwise disclose such unofficial results.

4. Each county clerk shall submit a plan to the Secretary of State setting forth the procedures that the county clerk will use for:

(a) Opening and closing all polling places within the jurisdiction of the county clerk; and

(b) Notifying the Secretary of State of election results on the day of election.

↳ The procedures required pursuant to this subsection must be submitted to the Secretary of State for his or her approval not later than 90 days before each election.

Sec. 7. NAC 293.240 is hereby amended to read as follows:

293.240 1. After a person is identified as being a registered voter and has signed the roster, a member of the election board:

(a) May issue the voter a receipt . ~~[-; and]~~

(b) Shall ask the voter if the voter needs assistance in casting a ballot.

(c) Shall make the following statement to the voter:

If you have any questions or concerns about the mechanical voting device, please stop voting immediately and bring your question or concern to the attention of a member of the election board. Once you have cast your ballot, you will not be able to have your question or concern addressed by the election board.

(d) Shall direct the voter to a voting booth equipped to handle the voter's ballot.

2. A member of the election board shall not permit any person to enter a voting booth to vote until he or she ascertains that the person understands how to operate the vote recording device.

3. If it is obvious to the members of an election board that a voter is trying to delay an election by repeatedly voiding his or her selections and not casting a ballot, a member of the election board must warn the voter that such actions are unlawful and offer assistance if necessary. If the voter continues to try to delay the election, the election board may take any appropriate action to expedite the election, including, without limitation, removing the voter from the polling place if the county clerk has approved the removal.

4. Before the commencement of voting and periodically throughout the election, members of the election board shall examine the voting booths to ensure that each booth does not contain any campaign cards, political advertising, partisan notes or any other matter which constitutes an unauthorized attempt to influence the voters.

5. The election board shall ensure that a copy of the statement set forth in paragraph (c) of subsection 1 is prominently displayed at the polling place.

6. If a member of the election board observes at a polling place any violation of the provisions of title 24 of NRS, he or she shall immediately notify the county clerk.

Sec. 8. NAC 293.245 is hereby amended to read as follows:

293.245 1. Subject to the provisions of subsections 2 to ~~6~~ 8, inclusive, any person may observe the conduct of voting at a polling place.

2. Before observing the conduct of voting at a polling place pursuant to subsection 1, a person must sign ~~a~~ *an acknowledgment in the* form prescribed by the Secretary of State stating that the person, during the time the person observes the conduct of voting:

(a) ~~May not talk~~ *Acknowledges that he or she is prohibited from:*

(1) *Talking* to voters within the polling place;

~~[(b) May not use]~~

(2) *Using* a mobile telephone or computer within the polling place;

~~[(e) May not advocate]~~

(3) *Advocating* for or against a candidate, political party or ballot question;

~~[(d) May not argue]~~

(4) *Arguing* for or against or ~~challenge~~ *challenging* any decisions of county or city election personnel;

~~[(e) May not interfere]~~ *and*

(5) *Interfering* with the conduct of voting; and

~~[(f)]~~ (b) May be removed from the polling place by the county or city clerk for violating any provision of title 24 of NRS or any of the provisions of ~~paragraphs~~ *paragraph* (a) . ~~to (f), inclusive.]~~

3. The county or city clerk may, at his or her discretion, remove from a polling place a person observing the conduct of voting pursuant to this section for violating any provision of title 24 of NRS or any of the provisions of ~~paragraphs~~ *paragraph* (a) ~~to (f), inclusive,]~~ of subsection 2.

4. A person observing the conduct of voting at a polling place pursuant to subsection 1 must comply with the same requirements that apply to members of the general public pursuant to NRS 293.274, 293.305 and 293.730.

5. A person observing the conduct of voting at a polling place pursuant to subsection 1 may remain in the designated area in the polling place after the polls close pursuant to NRS 293.273

so as to observe the closing of the polling place. The person shall not interfere with the closing of the polling place.

6. A person observing the conduct of voting at a polling place pursuant to subsection 1 may remain in an area designated by the chair of the election board to observe the activities conducted at the polling place without interfering with the voting. The designated area must allow for meaningful observation, but must not be located in an area that would allow an observer to infringe on the privacy and confidentiality of the ballot of the voter.

7. *A person observing the conduct of voting at a polling place pursuant to subsection 1 must wear a name tag denoting the person's full name.*

8. *The county and city clerk shall retain the signed acknowledgements described in subsection 2 for at least 180 days following the election observed by the person who signed the acknowledgment.*

9. As used in this section, "advocate" includes, without limitation, speaking, displaying or disseminating written material and wearing identifying clothing, buttons or other paraphernalia.

Sec. 9. NAC 293.395 is hereby amended to read as follows:

293.395 For the purposes of NRS 293.517:

1. The Secretary of State interprets "official identification" to mean a government-issued, or otherwise official, article or combination of articles, which establishes both the identity and residence of a person submitting an application to register to vote.

2. The following articles may be used to establish identity:

- (a) A current and valid Nevada driver's license;
- (b) A current and valid identification card issued by the Department;

(c) A current and valid identification card issued by a branch of the Armed Forces of the United States;

(d) A current and valid identification card issued by a sheriff of a Nevada county to an employee as a condition of employment by certain business enterprises;

(e) A current and valid identification card issued by an agency of the State of Nevada or political subdivision thereof or the United States, including, without limitation, a public school, college or university;

(f) A current and valid student identification card from an accredited private school, college or university;

(g) A current and valid United States passport;

(h) A current and valid insurance plan identification card which the county clerk determines, in his or her discretion, to be a reliable indication of the true name and identity of the person;

(i) A current and valid tribal identification card; *or*

~~(j) [A current and valid employee identification card which the county clerk determines, in his or her discretion, to be a reliable indication of the true name and identity of the person; or~~

~~—(k)]~~ Any other official ~~[article]~~ *photographic identification* which the county clerk determines, in his or her discretion, to be a reliable indication of the true name and identity of the person, including, without limitation, an expired article listed in paragraphs (a) to ~~[(j)]~~ (i), inclusive, if that article has been expired for 30 calendar days or less and is otherwise valid.

3. The following articles may be used to establish residency if the current residential address of the applicant, as indicated on the application to register to vote, is displayed on the article:

(a) Any article set forth in subsection 2;

- (b) A current and valid utility bill, including, without limitation, a bill for electricity, gas, oil, water, sewer, septic, telephone, cellular telephone or cable television;
- (c) A current and valid bank or credit union statement;
- (d) A current and valid paycheck;
- (e) A current and valid income tax return;
- (f) A current and valid statement concerning the mortgage, rental or lease of a residence;
- (g) A current and valid motor vehicle registration;
- (h) A current and valid document issued by a governmental agency;
- (i) A current and valid property tax statement; or
- (j) Any other official article which the county clerk determines, in his or her discretion, to be a reliable indication of the true residential address of the person.

Sec. 10. NAC 293.412 is hereby amended to read as follows:

293.412 1. A county clerk shall:

(a) Maintain a separate list of inactive voters or designate inactive voters as such on regular lists of registered voters and election board registers.

(b) At the request of the Secretary of State, report to the Secretary of State the total number of inactive voters.

2. The name of each inactive voter:

(a) Must be included on any list made available for public inspection pursuant to NRS 293.440 unless the person requesting the list requests the exclusion of those names.

(b) Must not be included on any list made available for public inspection pursuant to NRS 293.557.

3. The signature of an inactive voter shall be deemed to be the signature of a registered voter for all purposes regarding any petition authorized or required pursuant to title 24 of NRS.

4. A city or county clerk ~~is~~:

(a) *Is* not required to send a sample ballot to an inactive voter.

(b) *Is required to send an absent ballot to an inactive voter if the inactive voter requests:*

(1) *An absent ballot pursuant to the provisions of NRS 293.313 or 293C.310, as applicable; or*

(2) *A military-overseas ballot pursuant to the provisions of chapter 293D of NRS.*

5. *An inactive voter may vote in person at a polling place in the same manner as an active voter.*

6. As used in this section, “inactive voter” means a voter designated as inactive pursuant to NRS 293.530 whose registration has not been cancelled.

Sec. 11. NAC 293.416 is hereby amended to read as follows:

293.416 *1.* A written challenge authorized by NRS 293.547 must *be on a form prescribed by the Secretary of State and* contain, in addition to any other required information:

~~1.~~ (a) The address and, if readily available, the telephone number of the person whose right to vote is challenged.

~~2.~~ (b) The number of the precinct in which the person whose right to vote is challenged is registered to vote.

~~3.~~ (c) The name, address and telephone number of the person filing the challenge.

~~4.~~ (d) The precinct in which the person filing the challenge is registered to vote.

~~5.~~ (e) The date of the challenge.

~~6.~~ (f) A statement of the facts upon which each ground for the challenge is based.

~~[(7)]~~ (g) A statement that the challenge is based on personal knowledge of the facts upon which each ground for the challenge is based.

2. As used in this section, “personal knowledge” means that the person who files the challenge has firsthand knowledge through experience or observation of the facts upon each ground that the challenge is based.

Sec. 12. NAC 293.420 is hereby amended to read as follows:

293.420 1. The Secretary of State will create a standard form for use by persons who are applying to register to vote in person or by mail. The form will include:

(a) An application to register to vote, which may be submitted in person or by mail to the county clerk of the county in which the applicant resides;

(b) Instructions to assist the applicant in completing the application;

(c) A notice stating that the application must contain the Nevada driver’s license number of the applicant or, if the applicant has no Nevada driver’s license, at least the last four digits of the social security number of the applicant or, if the applicant has no social security number, a unique identification number assigned by the county clerk pursuant to NAC 293.411 and subsection 5 of NRS 293.507;

(d) ~~[(A list of the addresses and telephone numbers of county election officers);~~

~~—(e)]~~ A notice that if the applicant indicates on the application that the applicant is not a citizen of the United States or will not be at least 18 years of age on or before election day, the applicant may not register to vote;

~~[(f)]~~ (e) The option for the applicant to receive a sample ballot in larger type; and

~~(g)~~ (f) Instructions to the applicant to contact the county clerk if the applicant does not, within 10 days after submitting the application to the county clerk, receive his or her voter registration card indicating that the registration has been accepted.

2. The Secretary of State will assign a control number to each application and will determine the sequence of the control numbers. The control numbers will consist of a two-digit alphabetical code followed by a five-digit numerical code.

3. The control number must be printed:

(a) On a receipt of the application; and

(b) On the application to be returned to the county clerk.

4. On application forms that do not contain a control number, including, without limitation, the Federal Post Card Application submitted to a county clerk, the county clerk must enter the control number:

(a) On the application and a receipt of the application, if the application is submitted in person; or

(b) On the application, if the application is submitted by mail.

5. Each county clerk shall, and the Secretary of State will, after obtaining a series of control numbers from the Secretary of State, cause the forms to be printed. The county clerk shall continue to make available a sufficient number of the forms to meet the needs of the residents of the county.

Sec. 13. NAC 293C.330 is hereby amended to read as follows:

293C.330 1. After a person is identified as being a registered voter and has signed the roster, a member of the election board ~~shall~~ :

(a) *May issue the voter a receipt.*

(b) Shall ask the voter if the voter needs assistance in casting a ballot.

(c) Shall make the following statement to the voter:

If you have any questions or concerns about the mechanical voting device, please stop voting immediately and bring your question or concern to the attention of a member of the election board. Once you have cast your ballot, you will not be able to have your question or concern addressed by the election board.

(d) Shall direct the voter to a voting booth equipped to handle the voter's ballot.

2. A member of the election board shall not permit any person to enter a voting booth to vote until he or she ascertains that the person understands how to operate the ~~[vote recording]~~ *mechanical voting* device.

3. If it is obvious to the members of an election board that a voter is trying to delay an election by repeatedly voiding his or her selections and not casting a ballot, a member of the election board must warn the voter that such actions are unlawful and offer assistance if necessary. If the voter continues to attempt to delay the election, the election board may take any appropriate action to expedite the election, including, without limitation, removing the voter from the polling place if the county or city clerk has approved the removal.

4. Before the commencement of voting and periodically throughout the election, members of the election board shall examine the voting booths to ensure that each booth does not contain any campaign cards, political advertising, partisan notes or any other matter that constitutes an unauthorized attempt to influence the voters.

5. The election board shall ensure that a copy of the statement set forth in paragraph (c) of subsection 1 is prominently displayed at the polling place.

6. If a member of the election board observes at a polling place any violation of the provisions of title 24 of NRS, he or she shall notify immediately the city clerk.

Sec. 14. Chapter 294A of NAC is hereby amended by adding thereto a new section to read as follows:

The registration requirements for a nonprofit corporation set forth in NRS 294A.225 are in addition to the registration requirements for a nonprofit corporation set forth in NRS 82.523.

Sec. 15. NAC 293.355 is hereby repealed.

TEXT OF REPEALED SECTION

293.355 Demand for recount limited to ballots cast by mail. (NRS 293.124, 293.247, 293.403) A candidate who demands a recount pursuant to subsection 1 of NRS 293.403 may specify that the recount be limited to ballots cast by mail.