

**PROPOSED REGULATION OF
THE SECRETARY OF STATE**

LCB File No. R130-13

December 6, 2013

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

AUTHORITY: §§1, 4 and 7, NRS 293.124; §§2 and 5, NRS 293.124 and 293.247; §3, NRS 293.124, 293.1276, 293.1277, 293.1278, 293.1279 and 293.247; §6, NRS 293.124, 293.247 and 293D.200; §§8-19 and 21, NRS 293.124 and 294A.380; §20, NRS 306.011.

A REGULATION relating to elections; revising certain provisions relating to major and minor political parties; requiring county clerks to submit information relating to signature verification of certain petitions on the form prescribed by the Secretary of State for that purpose; authorizing the Secretary of State to keep confidential the name and contact information of a person who files a complaint concerning an alleged violation of certain laws relating to elections; requiring county clerks to provide copies of signatures of registered voters to city clerks; requiring local elections officials to count a military-overseas ballot signed by a covered voter using a digital or electronic signature; requiring a candidate personally to sign a contribution or campaign expense report; setting forth certain considerations for determining whether a statement or communication “advocates expressly” or “expressly advocates” for or against a clearly identified candidate or group of candidates or a question or group of questions on the ballot at an election; setting forth certain considerations for determining whether a candidate, group of candidates, question or group of questions is “clearly identified” in a statement or communication; revising provisions relating to nominating petitions for successors to public officers who are subject to a recall election; 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 and 3 of this regulation.

Sec. 2. *If a major political party or minor political party files an amended certificate of existence pursuant to NRS 293.128 or 293.171, respectively, that amends the name of the political party:*

1. The amended name of the political party is not required to be used by the Secretary of State, county clerk or city clerk on any ballot, sample ballot or application to register to vote until January 1 of the year following the year in which the amended certificate of existence is filed with the Secretary of State and thereafter.

2. The former name of the political party may be used by the Secretary of State, county clerk or city clerk on any ballot, sample ballot or application to register to vote through December 31 of the year in which the amended certificate of existence is filed with the Secretary of State.

Sec. 3. *Any information relating to the verification of signatures that a county clerk is required to forward, transmit or otherwise submit to the Secretary of State pursuant to NRS 293.1276 to 293.1279, inclusive, must be forwarded, transmitted or otherwise submitted on the form prescribed by the Secretary of State for that purpose.*

Sec. 4. NAC 293.025 is hereby amended to read as follows:

293.025 *1.* A person who wishes to file a complaint concerning an alleged violation of any provision of title 24 of NRS must:

~~1.1~~ *(a)* Submit the complaint in writing to the Secretary of State; and

~~1.2~~ *(b)* Sign the complaint.

↪ The complaint may include proof of the alleged violation.

2. The Secretary of State may keep confidential the name and contact information of a person who files a complaint pursuant to subsection 1.

Sec. 5. Chapter 293C of NAC is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2, the county clerk shall provide each city clerk of a city contained within the county with a copy of the signature of every registered voter who resides in the city not later than the day before the period for early voting by personal appearance begins pursuant to NRS 293C.3568 for the primary city election or general city election, as applicable.

2. A county clerk is not required to provide a city clerk with a copy of the signature of every registered voter who resides in the city if the city holds its primary city election and general city election on the dates set forth for primary elections and general elections pursuant to the provisions of chapter 293 of NRS.

Sec. 6. Chapter 293D of NAC is hereby amended by adding thereto a new section to read as follows:

A local elections official shall count a military-overseas ballot signed by a covered voter using a digital signature or electronic signature unless the local elections official reasonably believes that someone other than the covered voter signed the ballot.

Sec. 7. Chapter 294A of NAC is hereby amended by adding thereto the provisions set forth as sections 8, 9 and 10 of this regulation.

Sec. 8. *A candidate must personally sign any report that he or she is required to submit pursuant to chapter 294A of NRS.*

Sec. 9. *For the purposes of chapter 294A of NRS, in determining whether a statement or communication “advocates expressly” or “expressly advocates” for or against a clearly identified candidate, group of candidates, question or group of questions on the ballot at a primary election, general election or special election, the Secretary of State will consider, without limitation, the relation in time of the statement or communication to:*

1. The primary election, general election or special election, as applicable, in which the candidate, group of candidates, question or group of questions will appear on the ballot; or

2. A regular or special session of the Legislature.

Sec. 10. *For the purposes of chapter 294A of NRS, in determining whether a candidate, group of candidates, question or group of questions is “clearly identified” in a statement or communication, the Secretary of State will consider whether the statement or communication includes any name, nickname, title, image, photograph, phrase or other description of the candidate, group of candidates, question or group of questions, as applicable.*

Sec. 11. NAC 294A.040 is hereby amended to read as follows:

294A.040 1. Any ~~{campaign}~~ contribution received or campaign expense incurred or paid on a candidate’s behalf by his or her campaign committee, by his or her personal representative, or by any other authorized person during a period for which a report is required must be reported as the candidate’s ~~{campaign}~~ contribution or *campaign* expense.

2. Reporting requirements are not removed by special circumstances.

Sec. 12. NAC 294A.043 is hereby amended to read as follows:

294A.043 1. A person who makes a contribution in the form of services provided in kind for which money would have otherwise been paid to a:

(a) Candidate;

(b) Committee for political action, political party or committee sponsored by a political party;

(c) Person who ~~{is not under the direction or control of a candidate or group of candidates or of any person involved in the campaign of that candidate or group who}~~ makes an *independent* expenditure ; ~~{on behalf of the candidate or group that is not solicited or approved by the candidate or group;}~~ or

(d) Committee for the recall of a public officer,

↳ shall, within 30 days after the time he or she furnishes those services, provide to the recipient a statement signed by him or her that sets forth the actual cost of those services or, if that amount cannot be determined, the fair market value of those services.

2. A candidate, committee, political party or other person shall include the amount set forth in the statement provided pursuant to subsection 1 in the report required to be filed pursuant to the provisions of *chapter 294A of* NRS , ~~[294A.120, 294A.125, 294A.140, 294A.150, 294A.270, 294A.286 or 294A.360,]~~ unless the candidate, committee, political party or other person knows or should have known that the amount is not accurate.

3. If a candidate, committee, political party or other person knows or should have known that the amount set forth in the statement provided pursuant to subsection 1 is not accurate, he or she shall include in the *appropriate* report required to be filed pursuant to the provisions of *chapter 294A of* NRS ~~[294A.120, 294A.125, 294A.140, 294A.150, 294A.270, 294A.286 or 294A.360]~~ the amount that he or she determines is the actual cost of the services or, if he or she cannot determine the actual cost, the fair market value of the services.

Sec. 13. NAC 294A.075 is hereby amended to read as follows:

294A.075 1. The form of ~~the~~ *a* report of campaign expenses required to be filed pursuant to *chapter 294A of* NRS ~~[294A.125, 294A.200, 294A.210, 294A.220, 294A.280, 294A.286 or 294A.360]~~ must include:

(a) For each expenditure of more than \$100:

(1) The category of the expenditure as described in subsection 2 of NRS 294A.365;

(2) Except as otherwise provided in subsection 3, the name and address of the person who received payment for the expenditure; and

(3) The amount and date of the payment for the expenditure.

(b) The total amount spent for all categories of expenditures.

2. In addition to the requirements of subsection 1, in the case of a report of campaign expenses that a candidate is required to file pursuant to NRS 294A.125 or 294A.200, the form of the report must include, in the aggregate, expenditures which are less than \$100.

3. A report of campaign expenses required to be filed pursuant to *chapter 294A of* NRS ~~[294A.125, 294A.200, 294A.210, 294A.220, 294A.280, 294A.286 or 294A.360]~~ is not required to include the names and addresses of each person who received payment for circulating a petition for purposes of gathering signatures, provided that such report contains the total amount paid to such circulators as a group and, if such payments were calculated on a per signature basis, the amount paid per signature.

Sec. 14. NAC 294A.080 is hereby amended to read as follows:

294A.080 On the form of the report of ~~[campaign]~~ contributions required to be filed pursuant to *chapter 294A of* NRS , ~~[294A.120 or 294A.125,]~~ if a candidate has received a series of contributions from any natural person or other entity during a reporting period and the contributions total over \$100, the series must be treated as a single contribution and be separately identified on the candidate's report, with the name and address of the contributor and the date of each contribution in the series.

Sec. 15. NAC 294A.089 is hereby amended to read as follows:

294A.089 1. Except as otherwise provided in subsection 3, any:

(a) Candidate;

(b) Representative of a committee for political action, committee sponsored by a political party or political party;

(c) Person who ~~is not under the direction or control of a candidate or group of candidates or of any person involved in the campaign of the candidate or group which~~ makes an *independent* expenditure ; ~~on behalf of the candidate or group that is not solicited or approved by the candidate or group;~~ or

(d) Representative of a committee for the recall of a public officer,
↳ who returns a contribution within 14 days after he or she or any person who is authorized to receive contributions on his or her behalf receives the contribution, is not required to report that contribution pursuant to the provisions of *chapter 294A of* NRS . ~~[294A.120, 294A.125, 294A.140, 294A.150, 294A.270, 294A.286 or 294A.360.]~~

2. If a person returns a contribution more than 14 days after he or she or any person who is authorized to receive contributions on his or her behalf receives the contribution:

(a) He or she shall report it as a contribution pursuant to the provisions of *chapter 294A of* NRS ; ~~[294A.120, 294A.125, 294A.140, 294A.150, 294A.270, 294A.286 or 294A.360;]~~ and

(b) The return of the contribution shall be deemed a campaign expense and must be reported as such pursuant to the provisions of *chapter 294A of* NRS . ~~[294A.125, 294A.200, 294A.210, 294A.220, 294A.280, 294A.286 or 294A.360.]~~

3. A person described in subsection 1 who does not have personal knowledge of a contribution that is received by a person who is authorized to receive contributions on his or her behalf until more than 14 days after the contribution is received is not required to report that contribution pursuant to the provisions of *chapter 294A of* NRS ~~[294A.120, 294A.125, 294A.140, 294A.150, 294A.270, 294A.286 or 294A.360]~~ if the person:

(a) Returns the contribution within 14 days after he or she has personal knowledge of the contribution; and

(b) Includes in the next report he or she submits pursuant to the provisions of *chapter 294A of* NRS ~~{294A.120, 294A.125, 294A.140, 294A.150, 294A.270, 294A.286 or 294A.360}~~ an affidavit signed by him or her under penalty of perjury attesting that he or she:

(1) Did not have personal knowledge of the contribution until more than 14 days after a person authorized to receive contributions on his or her behalf received the contribution; and

(2) Returned the contribution within 14 days after he or she had personal knowledge of the receipt of the contribution.

Sec. 16. NAC 294A.091 is hereby amended to read as follows:

294A.091 For the purpose of determining the period for which a contribution must be reported pursuant to the provisions of *chapter 294A of* NRS , ~~{294A.120, 294A.125, 294A.140, 294A.150, 294A.270, 294A.286 or 294A.360,}~~ a contribution shall be deemed to have been received 14 days after a person described in subsection 1 of NAC 294A.089 or any person who is authorized to accept contributions on behalf of that person has knowledge of and actual physical possession of the contribution. The date on a check or other negotiable instrument is not conclusive evidence of the date of the receipt of a contribution.

Sec. 17. NAC 294A.097 is hereby amended to read as follows:

294A.097 1. The Secretary of State may waive a civil penalty for good cause pursuant to subsection 4 of NRS 294A.420, if the person, committee for political action or entity that is subject to a civil penalty pursuant to ~~{subsection 2 of}~~ NRS 294A.420:

(a) Files a written request for a waiver setting forth the basis for the waiver;

(b) Properly files the appropriate report pursuant to the applicable provisions of *chapter 294A of* NRS ; ~~{294A.120, 294A.140, 294A.150, 294A.200, 294A.210, 294A.220, 294A.270, 294A.280, 294A.286 or 294A.360,}~~ and

(c) Establishes that:

(1) Within a reasonable time before or on the date the applicable report was due, the candidate or a member of the family of the candidate, within the second degree of consanguinity or affinity, died, had a serious medical condition or was hospitalized;

(2) The candidate is experiencing extreme financial hardship to the extent that payment of the penalty would result directly in the loss or inability of the candidate to obtain the minimal necessities of food, medicine and shelter;

(3) The candidate or each officer and representative of the committee for political action or entity is or was a member of the Armed Forces of the United States serving outside of the State or country within a reasonable period of time before or on the date the applicable report was due and the candidate or each officer and representative of the committee for political action or entity executes an affidavit under penalty of perjury attesting to such facts;

(4) The candidate has been directly impacted by a natural disaster;

(5) The entity is organized as a nonprofit under the laws of the State of Nevada, has no paid employees and is comprised only of volunteers and:

(I) The representative of the entity who is responsible for filing the appropriate report on behalf of the entity pursuant to the applicable provisions of *chapter 294 of* NRS , ~~[294A.140, 294A.150, 294A.210, 294A.220, 294A.270, 294A.280 or 294A.286]~~ or a member of the family of such a representative, meets the conditions set forth in subparagraph (1) of paragraph (c); or

(II) The representative of the entity who is responsible for filing the appropriate report on behalf of the entity pursuant to the applicable provisions of *chapter 294A of* NRS ~~[294A.140, 294A.150, 294A.210, 294A.220, 294A.270, 294A.280 or 294A.286]~~ has, without notice, severed

his or her relationship with the entity within a reasonable time before or on the date that the applicable report was due; or

(6) The violation was not due to mere inadvertence, mistake or neglect, and circumstances exist of a similarly serious nature as set forth in this subsection to justify a waiver of the civil penalty, including, without limitation, an obligation to report for active military service or to serve in an official capacity in response to a public emergency.

2. The Secretary of State, with the approval of the Attorney General and for good cause, may reduce a civil penalty imposed pursuant to ~~subsection 2 of~~ NRS 294A.420 if:

(a) The penalty is being imposed for a failure to properly file a report or form for registration; and

(b) The person, committee for political action or entity that is subject to a civil penalty pursuant to ~~subsection 2 of~~ NRS 294A.420 first properly files the appropriate report or form.

Sec. 18. NAC 294A.098 is hereby amended to read as follows:

294A.098 1. A candidate shall not use ~~campaign~~ contributions to satisfy a civil penalty or criminal penalty imposed by law.

2. A committee for political action shall not use contributions to satisfy a civil penalty or criminal penalty imposed by law.

3. Each officer of a committee for political action is jointly and severally liable for any civil penalty or criminal penalty imposed on the committee for political action.

Sec. 19. NAC 294A.250 is hereby amended to read as follows:

294A.250 1. An amended form for registration required pursuant to paragraph (a) of subsection ~~3~~ 4 of NRS 294A.230 must be signed by an officer of the committee for political action filing the form or the registered agent of the committee for political action.

2. The annual form for registration required pursuant to paragraph (b) of subsection ~~3~~ 4 of NRS 294A.230 must be signed by an officer of the committee for political action filing the form or the registered agent of the committee for political action.

3. A committee for political action becomes inactive when:

(a) An officer or the registered agent of the committee for political action files with the Secretary of State a written notice that the committee for political action has ceased to engage in political activities in this State;

(b) The Secretary of State receives mail stamped by the postal service and returned from the address of record of the committee for political action on the most recent registration form on file in the Office of the Secretary of State stating that the addressee has moved and did not leave a forwarding address;

(c) The committee for political action does not file the annual form for registration required pursuant to paragraph (b) of subsection ~~3~~ 4 of NRS 294A.230; or

(d) If the committee for political action is subject to the provisions of NRS 294A.150 or 294A.220:

(1) When the final vote is cast in the election in which the question or group of questions for which the committee for political action is advocating the passage or defeat appears on the ballot; or

(2) If the election in which the question or group of questions for which the committee for political action is advocating the passage or defeat appears on the ballot is the subject of a challenge or recount, when the challenge or recount is completed.

4. A written notice of inactivity of a committee for political action:

(a) Must be on a form prescribed by the Secretary of State; and

(b) Must include, without limitation:

- (1) The name, address and phone number of the committee for political action;
- (2) The name of the registered agent of the committee for political action; and
- (3) The question or group of questions for which the committee for political action is

advocating the passage or defeat, if applicable.

5. Upon receipt of a notice of inactivity or returned mail, the Secretary of State will delete the name of the committee for political action from each list of active committees for political action which the Secretary of State maintains in his or her office.

6. As used in this section, an “officer” or “registered agent” of a committee for political action means a person who is listed as such on the committee’s form for registration on file with the Secretary of State.

Sec. 20. Chapter 306 of NAC is hereby amended by adding thereto a new section to read as follows:

1. Before a petition to nominate other candidates for office described in NRS 306.110 may be presented to registered voters for their signatures, a copy of the petition must be placed on file with the officer with whom the petition to recall is filed.

2. A petition to nominate other candidates for office may not be filed pursuant to subsection 2 of NRS 306.110 before the petition to recall a public officer is filed with the filing officer.

Sec. 21. NAC 293.050, 294A.045 and 294A.100 are hereby repealed.

TEXT OF REPEALED SECTIONS

293.050 Certified lists of candidates. (NRS 293.124, 293.247) Not later than 5 working days after the last day upon which any candidate who has filed a declaration of candidacy or acceptance of candidacy may withdraw the candidacy pursuant to NRS 293.202:

1. Each county clerk shall send to the Secretary of State a list certified by him or her that contains the name and mailing address of each candidate for a county, district or township office who has filed a declaration of candidacy or acceptance of candidacy with him or her.

2. The Secretary of State will send to each county clerk a list certified by him or her that contains the name and mailing address of each candidate of a minor political party and independent candidate who has filed a declaration of candidacy or an acceptance of candidacy with him or her.

294A.045 Filing of certain reports by candidate who withdraws his or her candidacy or loses primary election. (NRS 293.124, 294A.350, 294A.380)

1. A candidate for state, district, county, municipal or township office who withdraws his or her candidacy may, if he or she does not accept any additional campaign contributions and has no additional campaign expenses relating to that office, file all the reports of campaign contributions and expenses required pursuant to NRS 294A.120, 294A.200, 294A.286 and 294A.360 at the time he or she submits a notice of withdrawal to the appropriate filing officer.

2. A candidate for state, district, county, municipal or township office who loses a primary election may, if he or she does not accept any additional campaign contributions and has no

additional campaign expenses relating to that office, file a report of campaign contributions and expenses required pursuant to NRS 294A.120, 294A.200, 294A.286 or 294A.360 at the time he or she submits a report required pursuant to NRS 294A.120, 294A.200, 294A.286 or 294A.360.

294A.100 Recall or special election: Report of advocacy regarding candidate or question. (NRS 293.124, 294A.380)

1. In a recall or special election, a person who advocates:

(a) The election of a candidate other than himself or herself to national, congressional, state, district, county, municipal or township office;

(b) The defeat of a candidate other than his or her opponent in a national, congressional, state, district, county, municipal or township election;

(c) The election or defeat of a group of candidates not including himself or herself or his or her opponent for national, congressional, state, district, county, municipal or township office; or

(d) The passage or defeat of a question or a group of questions on the ballot at any election,
↪ shall file the report prescribed by the Secretary of State no later than 30 days after the election.

2. The report required by subsection 1 must address:

(a) In a recall election, the period after the filing of notice to circulate a recall petition up to the recall election.

(b) In a special election, the period 180 days before the special election.

3. The provisions of this section apply to groups of persons, whether formally or informally organized, who advocate the election or defeat of a candidate or group of candidates, or the passage or defeat of a question or group of questions on a ballot, at any election.