

SENATE BILL NO. 403—SENATOR FARLEY

MARCH 17, 2015

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions relating to elections.
(BDR 24-799)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

~

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

AN ACT relating to elections; requiring a candidate who violates certain residency requirements for elected public office to reimburse persons who made campaign contributions to the candidate; requiring certain reports; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a person may not be a candidate for any elected public office unless, for the 30-day period immediately preceding the date of the close of the filing period for that office, the person has actually, as opposed to constructively, resided in the State, district, county, township or other area prescribed by law for that office. Existing law provides that a person who knowingly and willfully files an acceptance of candidacy or declaration of candidacy which contains a false statement regarding the person's compliance with the 30-day residency requirement is guilty of a gross misdemeanor. (NRS 293.1755, 293C.200)

Existing law also regulates campaign finance practices, including campaign contributions. (Chapter 294A of NRS) Candidates must comply with certain reporting requirements for campaign contributions and must dispose of unspent or excess campaign contributions after an election. (NRS 294A.120, 294A.125, 294A.128, 294A.160, 294A.200) Candidates may use campaign contributions only for certain authorized purposes such as paying for campaign expenses and certain legal expenses. (NRS 294A.160, 294A.286) The Secretary of State may investigate, bring civil actions and impose civil penalties for violations of the campaign finance laws. (NRS 294A.410, 294A.420)

Sections 1 and 2 of this bill provide that in addition to any other remedies or penalties, a candidate who violates the 30-day residency requirement prescribed by law must comply with the campaign contribution reimbursement requirements set forth in **section 3** of this bill. **Section 3** provides that if a district court finds that a candidate has violated the 30-day residency requirement, the candidate must, within



* S B 4 0 3 *

a prescribed period, reimburse certain campaign contributors in an amount equivalent to the amount of the monetary contributions received for that campaign, whether or not the contributions were spent on any authorized campaign expenses or legal expenses. For any monetary contribution which, singly or cumulatively, exceeded \$100, the candidate must: (1) reimburse the contributor in an equivalent amount of money; or (2) if the contributor declines to be reimbursed or cannot be located, donate an equivalent amount of money to any tax-exempt nonprofit entity. For any monetary contribution which did not exceed \$100, the candidate must donate an equivalent amount of money to any tax-exempt nonprofit entity.

If the candidate is unable to comply with the requirements within the prescribed period, **section 3** authorizes the Secretary of State to extend the period or approve a payment plan. **Section 3** also requires the candidate to submit to the Secretary of State reports of each reimbursement or donation, and **section 6** of this bill authorizes the Secretary of State to impose certain civil penalties if the candidate fails to report within the required period. Finally, **section 3** prohibits a candidate from disposing of any unspent or excess monetary contributions after the election until it has been determined whether the candidate must reimburse or donate any monetary contributions pursuant to **section 3**.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 293.1755 is hereby amended to read as follows:

293.1755 1. In addition to any other requirement provided by law, no person may be a candidate for any office unless, for at least the 30 days immediately preceding the date of the close of filing of declarations of candidacy or acceptances of candidacy for the office which the person seeks, the person has, in accordance with NRS 281.050, actually, as opposed to constructively, resided in the State, district, county, township or other area prescribed by law to which the office pertains and, if elected, over which he or she will have jurisdiction or will represent.

2. Any person who knowingly and willfully files an acceptance of candidacy or declaration of candidacy which contains a false statement in this respect is guilty of a gross misdemeanor.

3. *In addition to any other remedy or penalty provided by law, if a district court finds that a person who is a candidate for any office violated subsection 1, the person is subject to the requirements of section 3 of this act.*

4. The provisions of this section do not apply to candidates for the office of district attorney.

Sec. 2. NRS 293C.200 is hereby amended to read as follows:

293C.200 1. In addition to any other requirement provided by law, no person may be a candidate for a city office unless, for at least the 30 days immediately preceding the date of the close of filing of declarations or acceptances of candidacy for the office that



1 the person seeks, the person has in accordance with NRS 281.050,
2 actually, as opposed to constructively, resided in the city or other
3 area prescribed by law to which the office pertains and, if elected,
4 over which he or she will have jurisdiction or which he or she will
5 represent.

6 2. Any person who knowingly and willfully files a declaration
7 of candidacy or an acceptance of candidacy that contains a false
8 statement in this respect is guilty of a gross misdemeanor.

9 3. *In addition to any other remedy or penalty provided by law,
10 if a district court finds that a person who is a candidate for any
11 office violated subsection 1, the person is subject to the
12 requirements of section 3 of this act.*

13 **Sec. 3.** Chapter 294A of NRS is hereby amended by adding
14 thereto a new section to read as follows:

15 1. *In addition to any other remedy or penalty provided by law,
16 but except as otherwise provided in this section, if a district court
17 finds that a person who is a candidate for any office violated
18 subsection 1 of NRS 293.1755 or subsection 1 of NRS 293C.200,
19 the candidate shall, in the manner and within the period
20 prescribed by this section, reimburse each person who made a
21 monetary contribution to the candidate, whether or not the
22 candidate used the monetary contribution for campaign expenses
23 or legal expenses pursuant to this chapter.*

24 2. *Except as otherwise provided in subsection 3, the candidate
25 shall reimburse a person for each monetary contribution in excess
26 of \$100 and any other monetary contributions which cumulatively
27 exceeded \$100 from the same person.*

28 3. *If a person who made a monetary contribution declines to
29 be reimbursed pursuant to this section or cannot be located at the
30 address listed on the report submitted to the Secretary of State
31 pursuant to NRS 294A.120 or a different address after a
32 reasonable search, the candidate shall donate an equivalent
33 amount of money to any tax-exempt nonprofit entity.*

34 4. *If the candidate received any contributions in the amount
35 of \$100 or less, the candidate shall donate an equivalent amount
36 of money to any tax-exempt nonprofit entity.*

37 5. *Except as otherwise provided in subsection 6, not later
38 than the 15th day of the second month after the date of the district
39 court's finding or, if an appeal is taken, after the date the appeal is
40 resolved by a final order, the candidate shall make all the
41 reimbursements and donations required by this section.*

42 6. *If, by the date prescribed by subsection 5, the candidate is
43 unable to make all the reimbursements and donations required by
44 this section, the Secretary of State may, upon a request filed by the
45 candidate before that date:*



(a) *Extend the period for making all the reimbursements and donations required by this section; or*

(b) *Approve an installment plan proposed by the candidate to make, in installments, all the reimbursements and donations required by this section.*

7. *If the Secretary of State approves an installment plan pursuant to this section, the Secretary of State shall:*

(a) *Create a record which describes the circumstances that require the installment plan, sets forth the terms of the installment plan and establishes the dates on which any reports regarding the reimbursements and donations required by this section are due; and*

(b) *Ensure that the record is available for review by the general public.*

8. *In addition to the reporting requirements set forth in NRS 294A.120, 294A.125, 294A.128, 294A.200 and 294A.286, the candidate shall submit to the Secretary of State a report listing all reimbursements and donations made pursuant to this section not later than the dates established by the Secretary of State by regulation.*

9. *Except as otherwise provided in NRS 294A.3733, any report required pursuant to this section must be filed electronically with the Secretary of State. The report shall be deemed to be filed on the date that it was received by the Secretary of State.*

10. *The candidate shall not use any contributions received as a candidate for another election to comply with the provisions of this section.*

11. *The candidate shall dispose of any unspent or excess contributions as provided in subsections 4 and 5 of NRS 294A.160 only after the date prescribed by subsection 5 to the extent such unspent or excess contributions are not necessary to comply with the provisions of this section.*

12. *The provisions of this section do not apply to a legal defense fund established pursuant to NRS 294A.286.*

Sec. 4. NRS 294A.160 is hereby amended to read as follows:

294A.160 1. It is unlawful for a candidate to spend money received as a contribution for the candidate's personal use.

2. Notwithstanding the provisions of NRS 294A.286, a candidate or public officer may use contributions to pay for any legal expenses that the candidate or public officer incurs in relation to a campaign or serving in public office without establishing a legal defense fund. Any such candidate or public officer shall report any expenditure of contributions to pay for legal expenses in the same manner and at the same time as the report filed pursuant to NRS 294A.120 or 294A.200. A candidate or public officer shall not



1 use contributions to satisfy a civil or criminal penalty imposed by
2 law.

3 3. ~~Every~~ *Except as otherwise provided in section 3 of this*
4 *act, every* candidate for office at a primary election, general election
5 or special election who is elected to that office and received
6 contributions that were not spent or committed for expenditure
7 before the primary election, general election or special election shall
8 dispose of the money through one or any combination of the
9 following methods:

10 (a) Return the unspent money to contributors;

11 (b) Use the money in the candidate's next election or for the
12 payment of other expenses related to public office or his or her
13 campaign, regardless of whether he or she is a candidate for a
14 different office in the candidate's next election;

15 (c) Contribute the money to:

16 (1) The campaigns of other candidates for public office or for
17 the payment of debts related to their campaigns;

18 (2) A political party; or

19 (3) Any combination of persons or groups set forth in
20 subparagraphs (1) and (2);

21 (d) Donate the money to any tax-exempt nonprofit entity; or

22 (e) Donate the money to any governmental entity or fund of this
23 State or a political subdivision of this State. A candidate who
24 donates money pursuant to this paragraph may request that the
25 money be used for a specific purpose.

26 4. ~~Every~~ *Except as otherwise provided in section 3 of this*
27 *act, every* candidate for office at a primary election, general election
28 or special election who withdraws pursuant to NRS 293.202 or
29 293C.195 after filing a declaration of candidacy or an acceptance of
30 candidacy, is removed from the ballot by court order or is defeated
31 for or otherwise not elected to that office and who received
32 contributions that were not spent or committed for expenditure
33 before the primary election, general election or special election
34 shall, not later than the 15th day of the second month after the
35 election, dispose of the money through one or any combination of
36 the following methods:

37 (a) Return the unspent money to contributors;

38 (b) Contribute the money to:

39 (1) The campaigns of other candidates for public office or for
40 the payment of debts related to their campaigns;

41 (2) A political party; or

42 (3) Any combination of persons or groups set forth in
43 subparagraphs (1) and (2);

44 (c) Donate the money to any tax-exempt nonprofit entity; or



(d) Donate the money to any governmental entity or fund of this State or a political subdivision of this State. A candidate who donates money pursuant to this paragraph may request that the money be used for a specific purpose.

5. ~~[Every]~~ *Except as otherwise provided in section 3 of this act, every* candidate for office who withdraws after filing a declaration of candidacy or an acceptance of candidacy, is defeated for that office at a primary election or is removed from the ballot by court order before a primary election or general election and who received a contribution from a person in excess of \$5,000 shall, not later than the 15th day of the second month after the primary election or general election, as applicable, return any money in excess of \$5,000 to the contributor.

6. Except as otherwise provided in subsections 7 and 8, every public officer who:

(a) Does not run for reelection to the office which he or she holds and is not a candidate for any other office; and

(b) Has contributions that are not spent or committed for expenditure remaining from a previous election,

➤ shall, not later than the 15th day of the second month after the expiration of the public officer's term of office, dispose of those contributions in the manner provided in subsection 4.

7. A public officer who:

(a) Resigns from his or her office;

(b) Is not a candidate for any other office; and

(c) Has contributions that are not spent or committed for expenditure remaining from a previous election,

➤ shall, not later than the 15th day of the second month after the effective date of the resignation, dispose of those contributions in the manner provided in subsection 4.

8. A public officer who:

(a) Does not run for reelection to the office which he or she holds and is a candidate for any other office; and

(b) Has contributions that are not spent or committed for expenditure remaining from a previous election,

➤ may use the unspent contributions in a future election. Such a public officer is subject to the reporting requirements set forth in NRS 294A.120, 294A.125, 294A.128, 294A.200 and 294A.362 for as long as the public officer is a candidate for any office.

9. In addition to the methods for disposing of the unspent money set forth in subsections 3, 4, 5, 7 and 8, a Legislator may donate not more than \$500 of that money to the Nevada Silver Haired Legislative Forum created pursuant to NRS 427A.320.

10. Any contributions received before a candidate for office at a primary election, general election or special election dies that were



not spent or committed for expenditure before the death of the candidate must be disposed of in the manner provided in subsection 4.

11. The court shall, in addition to any penalty which may be imposed pursuant to NRS 294A.420, order the candidate or public officer to dispose of any remaining contributions in the manner provided in this section.

12. As used in this section, "contributions" include any interest and other income earned thereon.

Sec. 5. NRS 294A.350 is hereby amended to read as follows:

294A.350 1. Except as otherwise provided in subsection 2, every candidate for office shall file the reports required by NRS 294A.120, 294A.125, 294A.128, 294A.200 and 294A.286, *and section 3 of this act*, even though the candidate:

(a) Withdraws his or her candidacy pursuant to NRS 293.202 or 293C.195;

(b) Ends his or her campaign without withdrawing his or her candidacy pursuant to NRS 293.202 or 293C.195;

(c) Receives no contributions;

(d) Has no campaign expenses;

(e) Is not opposed in the election by another candidate;

(f) Is defeated in the primary election;

(g) Is removed from the ballot by court order; or

(h) Is the subject of a petition to recall and the special election is not held.

2. Except as otherwise provided in subsection 3, a candidate described in paragraph (a), (b), (f) or (g) of subsection 1 may simultaneously file all the reports required by NRS 294A.120, 294A.125, 294A.128, 294A.200 and 294A.286 *and section 3 of this act* that are due after the candidate disposes of any unspent or excess contributions as provided in subsections 4 and 5 of NRS 294A.160, as applicable, *or after the candidate makes all reimbursements and donations required by section 3 of this act, whichever is later*, if the candidate gives written notice to the Secretary of State, on the form prescribed by the Secretary of State, that the candidate is ending his or her campaign and will not accept any additional contributions. If the candidate has submitted a withdrawal of candidacy pursuant to NRS 293.202 or 293C.195 to an officer other than the Secretary of State, the candidate must enclose with the notice a copy of the withdrawal of candidacy. A form submitted to the Secretary of State pursuant to this subsection must be signed by the candidate under an oath to God or penalty of perjury. A candidate who signs the form under an oath to God is subject to the same penalties as if the candidate had signed the form under penalty of perjury.



3. This section does not exempt a person whose name appears on the ballot and who is elected to office from any reporting requirement of this chapter.

Sec. 6. NRS 294A.420 is hereby amended to read as follows:

294A.420 1. If the Secretary of State receives information that a candidate, person, committee, political party or nonprofit corporation that is subject to the provisions of NRS 294A.120, 294A.128, 294A.140, 294A.150, 294A.200, 294A.210, 294A.220, 294A.230, 294A.250, 294A.270, 294A.280 or 294A.286 *or section 3 of this act* has not filed a report or form for registration pursuant to the applicable provisions of those sections, the Secretary of State may, after giving notice to that candidate, person, committee, political party or nonprofit corporation, cause the appropriate proceedings to be instituted in the First Judicial District Court.

2. Except as otherwise provided in this section, a candidate, person, committee, political party or nonprofit corporation that violates an applicable provision of this chapter is subject to a civil penalty of not more than \$5,000 for each violation and payment of court costs and attorney's fees. The civil penalty must be recovered in a civil action brought in the name of the State of Nevada by the Secretary of State in the First Judicial District Court and deposited by the Secretary of State for credit to the State General Fund in the bank designated by the State Treasurer.

3. If a civil penalty is imposed because a candidate, person, committee, political party or nonprofit corporation has reported its contributions, campaign expenses, independent expenditures , *reimbursements, donations* or other expenditures after the date the report is due, except as otherwise provided in this subsection, the amount of the civil penalty is:

(a) If the report is not more than 7 days late, \$25 for each day the report is late.

(b) If the report is more than 7 days late but not more than 15 days late, \$50 for each day the report is late.

(c) If the report is more than 15 days late, \$100 for each day the report is late.

↪ A civil penalty imposed pursuant to this subsection against a public officer who by law is not entitled to receive compensation for his or her office or a candidate for such an office must not exceed a total of \$100 if the public officer or candidate received no contributions and made no expenditures during the relevant reporting periods.

4. For good cause shown, the Secretary of State may waive a civil penalty that would otherwise be imposed pursuant to this section.



5. When considering whether to waive, pursuant to subsection 4, a civil penalty that would otherwise be imposed pursuant to subsection 3, the Secretary of State may consider, without limitation:

(a) The seriousness of the violation, including, without limitation, the nature, circumstances and extent of the violation;

(b) Any history of violations committed by the candidate, person, committee, political party or nonprofit corporation against whom the civil penalty would otherwise be imposed;

(c) Any mitigating factor, including, without limitation, whether the candidate, person, committee, political party or nonprofit corporation against whom the civil penalty would otherwise be imposed reported the violation, corrected the violation in a timely manner, attempted to correct the violation or cooperated with the Secretary of State in resolving the situation that led to the violation;

(d) Whether the violation was inadvertent;

(e) Any knowledge or experience the candidate, person, committee, political party or nonprofit corporation has with the provisions of this chapter; and

(f) Any other factor that the Secretary of State deems to be relevant.

6. If the Secretary of State waives a civil penalty pursuant to subsection 4, the Secretary of State shall:

(a) Create a record which sets forth that the civil penalty has been waived and describes the circumstances that constitute the good cause shown; and

(b) Ensure that the record created pursuant to paragraph (a) is available for review by the general public.

7. The remedies and penalties provided by this chapter are cumulative, do not abrogate and are in addition to any other remedies and penalties that may exist at law or in equity, including, without limitation, any criminal penalty that may be imposed pursuant to this chapter or NRS 199.120, 199.145 or 239.330.

Sec. 7. This act becomes effective:

1. Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks necessary to carry out the provisions of this act; and

2. On January 1, 2016, for all other purposes.

