

PHOTOGRAPHY OF A COMPLETED BALLOT

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House Bill 4196 (proposed substitute H-1)
Sponsor: Rep. Steven Johnson
Committee: Elections and Ethics
Complete to 1-21-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4328 would amend the Michigan Election Law to allow voters to photograph their own ballots in the voting booth.

The bill would allow a voter to do either of the following:

- Use a camera (including a cell phone camera) to take a photo of his or her ballot in the voting booth.
- Display a photo of the marked ballot, as long as it was displayed at least 100 feet from a polling location entrance.

Currently, section 738 of the Michigan Election Law prohibits individuals from showing a completed ballot to another person who is not lawfully assisting in their voting. If a voter exposes a ballot, it is to be disposed of after being “rejected for exposure.” The bill would specifically exempt display of a marked ballot as long as it was being displayed at least 100 feet from a polling location entrance.

The bill would take effect 90 days after its enactment.

MCL 168.579 and 168.738; proposed MCL 168.736h

BACKGROUND:

“Ballot selfies” have been an increasing topic of debate in Michigan and around the country. In 2012, a voter in the Kalamazoo area took a picture of himself with his completed ballot and posted it on social media. After being informed of the ban on displaying a completed ballot, he brought suit in 2016 to overturn the ban, arguing that it violated his First Amendment free speech rights.

Fourteen days before the 2016 general election, in *Crookston v Johnson*,¹ the U.S. District Court for the Western District of Michigan granted an injunction, suspending the rules against ballot selfies. However, four days later, on October 28, 2016, the U.S. Court of Appeals for the 6th Circuit granted the Michigan Secretary of State’s motion to stay the injunction, thus reinstating the ballot selfie prohibition.² While the case raised compelling issues, the court found, there was not time to consider those issues fully before the election.

¹ Case number: 1:16-cv-01109

² *Crookston v Johnson*, 841 F 3d 396 (2016).

On May 8, 2019, the Secretary of State announced a settlement to the case, which House Bill 4196 would enshrine in statute. The settlement provided that voters would be allowed to take a photograph of their own ballots, but only while in the voting booth. According to the Secretary of State's office, the settlement would not affect other prohibitions on photography in the area where voting is occurring or sharing ballot images within 100 feet from the polling place (the buffer zone where electioneering is prohibited).³

Other states have enacted varying laws regarding ballot selfies, ranging from Hawaii, which in 2016 allowed voters to distribute or share a digital image of the voter's own marked ballot via social media,⁴ to Arizona, which in 2015 prohibited voters from taking photographs or video within 75 feet of polling places.⁵

FISCAL IMPACT:

The bill would have no fiscal impact on the state or local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

³ <https://www.michigan.gov/sos/0,4670,7-127--496902--00.html>

⁴ https://www.capitol.hawaii.gov/session2016/bills/HB27_SD1_.htm

⁵ <https://www.azleg.gov/legtext/52leg/1r/laws/0187.htm>