

## PERMITTING “BALLOT SELFIES”

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4328 as introduced**  
**Sponsor: Rep. Steven Johnson**  
**Committee: Elections and Ethics**  
**Complete to 12-11-18**

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

## SUMMARY:

House Bill 4328 would amend the Michigan Election Law to allow electors to use cameras, including cell phone cameras, in polling places and polling booths for the purpose of photographing themselves and/or their ballots.

Currently, section 738 of the Michigan Election Law prohibits individuals from showing a completed ballot to another person other than those who are legally allowed to assist them while voting. If a voter exposes a ballot, it will be “rejected for exposure.” The Michigan Secretary of State also prohibits the use of electronics such as video and still cameras, cell phone cameras, and recording equipment in polling stations and voting booths.<sup>1</sup>

The bill would specifically allow individuals to photograph themselves within a polling place; to photograph their ballot in a polling booth or voting compartment; or to photograph themselves with their ballot in such a booth or compartment.

Additionally, the bill would allow absent voters to take a photo of their absentee ballots or of themselves with their absentee ballots.

It would not matter, for the above provisions, whether the ballot had been completed at the time of the photo.

The bill would take effect 90 days after enactment.

Proposed MCL 168.736h and 168.763

## BACKGROUND INFORMATION:

“Ballot selfies” have been an increasing topic of debate in Michigan and other states. Some say that they are a type of free speech, while others argue that ballot selfies violate ballot exposure laws and threaten other individuals’ right to vote without interference or intimidation.

In *Crookston v Johnson*, the U.S. District Court for the Western District of Michigan<sup>2</sup> granted an injunction, suspending the rules against ballot selfies on the premise that they

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<sup>1</sup> <https://www.michigan.gov/sos/0,4670,7-127-29836-202491--F,00.html>

<sup>2</sup> Case number: 1:16-cv-01109

infringe upon the First Amendment of the U.S. Constitution. However, 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.<sup>3</sup> As of December 2018, the case is ongoing.

Other states are also facing this issue; in 2017, at least 15 states considered considering bills addressing ballot selfies and the secrecy of the ballot.<sup>4</sup> Legislation in New Hampshire in 2014 prohibited voters from taking pictures of their ballots and sharing them on social media, but this ban was eventually overturned as the federal 1st Circuit Court of Appeals determined that the prohibition was too broad to survive the requisite level of scrutiny for restrictions on speech.<sup>5</sup>

### **FISCAL IMPACT:**

The bill would have no fiscal impact on 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.

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<sup>3</sup> *Crookston v Johnson*, 841 F 3d 396 (2016).

<sup>4</sup> <http://www.ncsl.org/research/elections-and-campaigns/secrecy-of-the-ballot-and-ballot-selfies.aspx>

<sup>5</sup> *Rideout v Gardner*, 838 F 3d 65 (2016).