

**FIRST ENGROSSMENT
with House Amendments**

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2336

Introduced by

Senator Krebsbach

Representative Haas

1 A BILL for an Act to amend and reenact sections 16.1-07-01, 16.1-07-05, 16.1-07-06,
2 16.1-07-08, 16.1-07-08.1, and 16.1-07-12 of the North Dakota Century Code, relating to
3 absentee voting.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 16.1-07-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **16.1-07-01. Absent voter - Who may vote.**

- 8 1. Any qualified elector of this state, including an individual who is in the armed forces
9 of the United States, is in the merchant marine of the United States, or is a United
10 States citizen living outside the United States who resided in this state immediately
11 prior to the individual's departure from the United States, may vote an absent
12 voter's ballot at any general, special, or primary state election, any county election,
13 or any city or school district election.
- 14 2. ~~A qualified elector who is a citizen of the United States and lives outside the United~~
15 ~~States or a citizen of the United States who is eighteen years of age or older and,~~
16 has never lived in the United States, and whose parent is a qualified elector of the
17 state may vote absentee in this state pursuant to this chapter if the individual:
- 18 a. Does not maintain a domicile;
- 19 b. Is not registered to vote in any other state, territory, or possession of the
20 United States;
- 21 c. Is not voting in any other state, territory, or possession of the United States;
22 and
- 23 d. Possesses a valid passport or card of identity and registration issued under
24 the authority of the secretary of state of the United States.

1 Such an elector may vote only in federal elections, which means any election held
2 solely or in part for the purpose of electing or nominating any candidate for the
3 office of president, vice president, presidential elector, member of the United
4 States senate, or member of the United States house of representatives.

5 3. An elector who votes by absentee ballot may not vote in person at the same
6 election.

7 **SECTION 2. AMENDMENT.** Section 16.1-07-05 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **16.1-07-05. Time for applying for ballot - Applications and voting for uniformed**
10 **citizens and for citizens living outside the United States - Emergency situations -**
11 **Sufficient time for application and ballot return.**

12 1. At any time in an election year, any qualified elector may apply to the county
13 auditor, the auditor or clerk of the city, or the business manager of the school
14 district, as the case may be, by facsimile or otherwise, for an official ballot to be
15 voted at that election. A voter may obtain an application form for an absent voter's
16 ballot for a general, special, primary, or county election from either the county
17 auditor or a city auditor. The application form, ~~for a member of the United States~~
18 ~~armed forces or the United States merchant marine or for a qualified elector living~~
19 ~~outside the United States,~~ must include a space for the applicant to indicate
20 whether the application is for all statewide elections in the calendar year or only for
21 the election that is immediately after the date of the application.

22 2. An applicant who is a qualified elector and on active duty as a member of the
23 United States armed forces or the United States merchant marine may receive an
24 absentee ballot by mail, facsimile, or electronic mail. In the event that returning the
25 voted ballot by mail is not practicable, qualified electors meeting the stated criteria
26 of this subsection may return a voted ballot and other required documents to the
27 county auditor by means of facsimile transmission or electronic mail. To return a
28 voted ballot and other required documents by electronic mail, the eligible voter
29 must have access to the technology to scan the documents, save the documents
30 in a secure format approved by the secretary of state, and return the documents as
31 an electronic mail attachment directly to the electronic mail address assigned by

1 the auditor, clerk, or business manager for that purpose prior to midnight in the
2 voter's county of residence on the day before the election. The secretary of state
3 shall develop written guidelines relating to security measures for voted ballots
4 returned by electronic mail.

5 3. Spouses, children, or other dependents of active duty members of the United
6 States armed forces or merchant marine who are qualified electors and stationed
7 as a family outside the United States are granted the same absentee voting rights
8 as the individual's spouse, parent, or guardian has under subsection 2.

9 4. ~~An applicant who is a member of the United States armed forces or the United~~
10 ~~States merchant marine living outside the United States or is a qualified elector~~
11 ~~living outside the United States may apply for and vote by facsimile if otherwise~~
12 ~~qualified to apply for and vote by absentee ballot. An auditor, clerk, or business~~
13 ~~manager may send and receive facsimile absentee ballot applications and~~
14 ~~facsimile absentee ballots to any individual eligible to apply for and vote by~~
15 ~~facsimile under this section~~ receive an absentee ballot by mail, facsimile, or
16 electronic mail. If returning the voted ballot by mail is not practicable, a qualified
17 elector may return a voted ballot and other required documents to the county
18 auditor by means of facsimile transmission or electronic mail. The elector must
19 have access to the technology to scan the documents, save the documents in a
20 secure format approved by the secretary of state, and return the documents as an
21 electronic mail attachment directly to the electronic mail address assigned by the
22 auditor, clerk, or business manager for that purpose before midnight in the voter's
23 county of residence on the day before the election. The secretary of state shall
24 develop written guidelines relating to security measures for voted ballots returned
25 by electronic mail.

26 5. No auditor or clerk may issue ballots for absentee voters on the day of the election
27 except to persons prevented from voting in person on the day of the election due
28 to an emergency. A person requesting an absentee ballot on the day of the
29 election due to an emergency must do so through an agent as set forth in this
30 chapter. An agent may represent only one person. The absentee ballot must be
31 returned to the county auditor's office by four p.m. on the day of the election.

1 6. A completed application must be submitted to the appropriate election official in a
2 timely manner so as to allow the applicant to receive, complete, and mail the
3 absent voter's ballot before the day of the election.

4 **SECTION 3. AMENDMENT.** Section 16.1-07-06 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **16.1-07-06. Application form.**

7 1. Application for an absent voter's ballot must be made on a form, prescribed by the
8 secretary of state, to be furnished by the proper officer of the county, city, or school
9 district in which the applicant is an elector, on any form, approved by the secretary
10 of state, or any blank containing the following information:

- 11 a. The applicant's name.
12 b. The applicant's current or most recent North Dakota residential address.
13 c. The applicant's mailing address.
14 d. The applicant's current home telephone number.
15 e. The election for which the ballot is being requested.
16 f. The date of the request.
17 g. An affirmation that the applicant has resided, or will reside, in the precinct for
18 at least thirty days next preceding the election.
19 h. The applicant's signature.
20 i. A space for the voter to include the voter's precinct or voting location, if
21 known.

22 If the applicant is unable to sign the applicant's name, the applicant shall mark (X)
23 on the application in the presence of a disinterested person. The disinterested
24 person shall print the name of the person marking the X below the X and shall sign
25 that the disinterested person's own name following the printed name together with
26 the notation "witness to the mark".

27 2. A The application for a qualified elector ~~absent from the state is not required to file~~
28 ~~an application for an absent voter's ballot for any statewide election if either of the~~
29 ~~following apply~~ serving on active duty as a member of the United States armed
30 forces, merchant marine, or a family member who is a qualified elector and
31 stationed outside the United States together with the individual's spouse, parent, or

1 guardian must include the following additional information if the voter desires to
2 vote by facsimile or electronic mail:

3 a. ~~The elector is a member, or spouse or dependent of a member, of the United~~
4 ~~States armed forces or merchant marine living outside the United States.~~

5 Facsimile telephone number; or

6 b. ~~The elector is a United States citizen living outside the United States~~

7 Electronic mail address.

8 ~~If the qualified elector furnishes the county auditor with a current mailing address~~
9 ~~and the elector's residential address, the county auditor either shall mail to the~~
10 ~~qualified elector a ballot with a return envelope and instructions or send to the~~
11 ~~qualified elector the ballot and instructions by facsimile for voting for any statewide~~
12 ~~election in that calendar year.~~

13 3. The application for a qualified elector living outside the United States must include
14 a facsimile telephone number or electronic mail address if the voter desires to vote
15 by facsimile or electronic mail.

16 **SECTION 4. AMENDMENT.** Section 16.1-07-08 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **16.1-07-08. Delivering ballots - Envelope accompanying - Statement on**
19 **envelope - Challenging electors voting by absentee ballot - Inability of elector to sign**
20 **name.**

21 1. Upon receipt of an application for an official ballot properly filled out and duly
22 signed, or as soon thereafter as the official ballot for the precinct in which the
23 applicant resides has been prepared, the county auditor, city auditor, or business
24 manager of the school district, as the case may be, shall send to the absent voter
25 by mail, at the expense of the political subdivision conducting the election, one
26 official ballot, or personally deliver the ballot to the applicant or the applicant's
27 agent, which agent may not, at that time, be a candidate for any office to be voted
28 upon by the absent voter. The agent shall sign the agent's name before receiving
29 the ballot and deposit with the auditor or business manager of the school district,
30 as the case may be, authorization in writing from the applicant to receive the ballot
31 or according to requirements set forth for signature by mark. The auditor or

1 business manager of the school district, as the case may be, may not provide an
2 absent voter's ballot to a person acting as an agent who cannot provide a signed,
3 written authorization from an applicant. No person may receive compensation,
4 including money, goods, or services, for acting as an agent for an elector, nor may
5 a person act as an agent for more than four electors in any one election. A voter
6 voting by absentee ballot may not require the political subdivision providing the
7 ballot to bear the expense of the return postage for an absentee ballot.

8 2. If there is more than one ballot to be voted by an elector of the precinct, one of
9 each kind must be included and an envelope must be enclosed with the ballot or
10 ballots. The front of the envelope must bear the official title and post-office
11 address of the officer supplying the voter with the ballot and upon the other side a
12 printed ~~statement~~ voter's affidavit in substantially the following form:

13 Precinct _____

14 Name _____

15 Residential Address _____

16 City _____ ND Zip Code _____

17 Under penalty of possible criminal prosecution for making a false
18 statement, I swear that I reside at the residential address provided
19 above, that I have resided in my precinct for at least thirty days
20 next preceding the election, and this is the only ballot I will cast
21 in this election.

22 Applicant's Signature _____

23 Date _____

24 If the absent voter is unable to sign the voter's name, the voter shall mark (X) on
25 the statement in the presence of a disinterested person. The disinterested person
26 shall print the name of the person marking the X below the X and shall sign ~~that~~
27 the disinterested person's own name following the printed name together with the
28 notation "witness to the mark".

29 3. ~~The county auditor, city auditor, or business manager of the school district, as the~~
30 ~~case may be, may challenge the right of anyone to vote an absent voter's ballot~~
31 ~~whom that officer knows or has reason to believe is not a qualified elector. When~~

1 ~~challenging a voter who has applied for an absentee voter's ballot, the election~~
2 ~~official shall follow the procedures and use the affidavit provided for in section~~
3 ~~16.1-05-06 and include a voter's affidavit with the outgoing absentee voter's ballot~~
4 ~~along with an explanation that the voter's right to vote is being challenged and that~~
5 ~~the voter's affidavit must be completed and returned with the voter's absentee~~
6 ~~voter's ballot to be accepted.~~

7 4. Each person requesting an absent voter's ballot under this chapter must be
8 provided a set of instructions, prescribed by the secretary of state, sufficient to
9 describe the process of voting by absent voter's ballot. The voting instructions
10 must contain a statement informing the individual that the individual is entitled to
11 complete the absent voter's ballot in secrecy.

12 ~~5.~~ 4. Each individual requesting an absent voter's ballot under this chapter who cannot
13 read the English language or who because of blindness or other disability is unable
14 to mark the voter's ballot, upon request, may receive the assistance of any person
15 of the voter's choice, other than the voter's employer, an officer or agent of the
16 voter's union, a candidate running in that election, or a relative of a candidate as
17 described in subsection 2 of section 16.1-05-02, in marking the voter's ballot.

18 **SECTION 5. AMENDMENT.** Section 16.1-07-08.1 of the North Dakota Century Code
19 is amended and reenacted as follows:

20 **16.1-07-08.1. Procedures for voting with special write-in or federal write-in**
21 **absentee ballot.**

22 1. Notwithstanding any other provision of this chapter, a qualified absentee elector
23 may apply to the county auditor for a special write-in absentee ballot. This ballot
24 may be used to vote for presidential electors and members of the United States
25 senate and of the United States house of representatives.

26 2. The application for a special write-in absentee ballot may be made on a form
27 prescribed by the secretary of state. In order to qualify for a special write-in
28 absentee ballot, the voter shall state on the application that the voter is unable to
29 vote by regular absentee ballot or in person due to requirements of military service
30 or due to living in isolated or extremely remote areas of the world.

- 1 3. Upon receipt of the application, the county auditor shall issue the special write-in
2 absentee ballot, which must be in the form prescribed by the secretary of state.
3 The ballot must permit the elector to vote by writing in a party preference for each
4 office, the names of specific candidates for each office, or the name of the person
5 whom the voter prefers for each office.
- 6 4. If the voter is temporarily residing outside the United States or is a member of the
7 United States armed forces, merchant marine, or a family member and a qualified
8 elector, the voter may use the federal write-in absentee ballot in general, special,
9 and primary elections for local, state, or federal offices.
- 10 5. If the voter is residing outside the United States, or is a member of the United
11 States armed forces, merchant marine, or a family member, and a qualified elector
12 stationed outside the United States, the voter may use the federal write-in
13 absentee ballot transmission envelope as an absentee ballot application
14 simultaneously with the submission of the federal write-in absentee ballot if the
15 voter is otherwise eligible to vote absentee in the jurisdiction where the request is
16 submitted.

17 **SECTION 6. AMENDMENT.** Section 16.1-07-12 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **16.1-07-12. Opening ballot - Voting or rejecting - Depositing in ballot box -**
20 **Preserving.** At any time between the opening and closing of the polls on election day, the
21 election judges of the relevant precinct first shall open the outer envelope and compare the
22 signature on such application for an absent voter's ballot with the signature on the statement
23 provided for in section 16.1-07-08. If the judges find that the statement is sufficient and that the
24 signatures correspond, and that the applicant is then a duly qualified elector of such precinct
25 and has not voted at the election, they shall open the absent voter's envelope in such manner
26 as not to destroy the statement thereon. They shall take out the ballot or ballots contained
27 therein without unfolding the same, or permitting the same to be opened or examined, and after
28 ~~stamping and initialing~~ or initialing the same as other ballots are ~~stamped and initialed~~ or
29 initialed, they shall deposit the ballot in the proper ballot box and show in the pollbook of the
30 election that the elector has voted. If the statement is found to be insufficient, or that the
31 signatures do not correspond, or that the applicant is not then a duly qualified elector of the

1 precinct, the vote may not be allowed, but without opening the absent voter's envelope, the
2 election inspector or election judge shall mark across the face thereof "rejected as defective" or
3 "rejected as not an elector", as the case may be. These rejected ballots are then turned over to
4 the county canvassing board for final determination of eligibility. The subsequent death of an
5 absentee voter after having voted by absentee ballot does not constitute grounds for rejecting
6 such ballot.