

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1078
(Judiciary Committee)
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact sections 16.1-13-35, 16.1-13-36, 16.1-13-37, 16.1-13-38, 16.1-13-39, 16.1-13-40, 16.1-13-41, 16.1-13-42, 16.1-13-43, and 16.1-13-44 and chapter 16.1-14.1 of the North Dakota Century Code, relating to presidential elections and the adoption of the Uniform Faithful Presidential Electors Act; to amend and reenact subsection 1 of section 16.1-03-14 and sections 16.1-06-06, 16.1-12-02, 16.1-14-01, 16.1-14-03, 16.1-14-08, 16.1-14-09, 16.1-14-10, 16.1-14-11, 16.1-14-12, 16.1-14-13, and 16.1-14-14 of the North Dakota Century Code, relating to nominating presidential electors and alternate electors, and presidential electors' roles and procedures; to repeal sections 16.1-14-05, 16.1-14-18, 16.1-14-19, 16.1-14-20, 16.1-14-21, 16.1-14-22, 16.1-14-23, 16.1-14-24, 16.1-14-25, 16.1-14-26, 16.1-14-27, and 16.1-14-28 of the North Dakota Century Code, relating to the filling of a vacancy of a presidential elector and voting of new and former residents at presidential elections; and to provide a contingent effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 16.1-03-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The party state committee shall set the place and time of the state party convention to be held in each general election year. Subject to party rules and bylaws, the state party convention may:
 - a. Nominate the legal number of ~~qualified electors~~elector nominees and alternate elector nominees for its party for the offices of presidential electors. The nominees must be qualified electors of this state.
 - b. Elect the required number of delegates and alternates to the national party convention.
 - c. Endorse candidates as provided under subsection 2.

SECTION 2. AMENDMENT. Section 16.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-06. General election ballots for persons authorized to vote for presidential electors only - Prepared separately - General law governs.

In addition to the ballots prepared pursuant to section 16.1-06-05, ballots must be prepared containing only the names of duly certified candidates for presidential electors for use by persons authorized to vote for those offices by law. The provisions of this title regarding the preparation, form, arrangement of names, and delivering of ballots must govern in regard to the general election ballot prepared pursuant to this section. The ballots prepared pursuant to this section must be delivered to electors who qualify only to vote for presidential electors pursuant to sections ~~16.1-14-18~~16.1-13-35 and ~~16.1-14-19~~16.1-13-36.

SECTION 3. AMENDMENT. Section 16.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-12-02. Certificates of nomination by petition - Form and contents.

Certificates of nomination for nominees for an office to be filled at a general or special election, except for an office appearing on the no-party ballot, may be made as provided by this section. Except for nominees for president of the United States, names of nominees so nominated must appear on the ballot as independent nominations. The names of nominees for president of the United States may appear on the ballot with a designation, not to exceed five words, that names the organization or political party to which the presidential candidate affiliates. The designation may not falsely indicate an affiliation with or the support of any political party organized in accordance with this title or include any substantive word or phrase that is profane or that is already included in or resembles the name of a political party entitled to a separate column under section 16.1-11-30. Except for candidates for the office of president of the United States, each certificate of nomination by petition must meet the specifications for nominating petitions set forth in section 16.1-11-16. A political party or organization desiring to submit to the secretary of state the name of a qualified candidate for the office of the president of the United States may begin gathering the signatures for the certificate of nomination on the first day of January of a presidential election year and shall submit the petition to the secretary of state before four p.m. on the sixty-fourth day before the general election. The signatures on the petition must be in the following number:

1. Except as provided in subsection 3, if the nomination is for an office to be filled by the qualified electors of the entire state, there must be no fewer than one thousand signatures.
2. If the nomination is for an office to be filled by the qualified electors of a district less than the entire state, the number of signatures must be at least two percent of the resident population of the district as determined by the most recent federal decennial census, but in no case may more than three hundred signatures be required.
3. If the nomination is for the office of president, there must be no fewer than four thousand signatures and the petition must contain the names of the presidential and vice presidential candidates along with the names of the elector nominees and alternate elector nominees for the office of the North Dakota presidential electors selected from the qualified electors of North Dakota. The elector nominees and alternate elector nominees must be qualified electors of North Dakota.
4. If the petition is for the office of governor or lieutenant governor, it must contain the names and other required information of candidates for both those offices.

SECTION 4. Section 16.1-13-35 of the North Dakota Century Code is created and enacted as follows:

16.1-13-35. Eligibility of new residents to vote for presidential electors.

A citizen of the United States who, immediately before the citizen's relocation to this state, was a citizen of another state and who has been a resident of the precinct for less than thirty days before a presidential election, is entitled to vote for presidential electors at the election, but for no other offices, if:

1. The citizen otherwise possesses the substantive qualifications to vote in this state, except the required residence; and
2. The citizen complies with the provisions of sections 16.1-13-37, 16.1-13-41, and 16.1-13-44.

SECTION 5. Section 16.1-13-36 of the North Dakota Century Code is created and enacted as follows:

16.1-13-36. Eligibility of former residents to vote for presidential electors.

A citizen of the United States who was a qualified elector in this state immediately before establishing residence in another state and who has not qualified for voting purposes due to the

residency requirement of that state may vote in this state for president and vice president only, by applying for a separate ballot under section 16.1-13-37 at least one day before the election. The requirements and procedure for former residents to vote are governed by sections 16.1-13-37, 16.1-13-40, 16.1-13-41, 16.1-13-42, 16.1-13-43, and 16.1-13-44, and the statements relative to new residents contained in those sections must be changed by the county auditor and inspector of elections to comply with this section for this purpose.

SECTION 6. Section 16.1-13-37 of the North Dakota Century Code is created and enacted as follows:

16.1-13-37. Application for presidential elector ballot by new residents.

An individual desiring to qualify to vote for presidential electors is not required to register, but, at least ten days before the election, the individual shall apply in the form of an affidavit executed in duplicate in the presence of the county auditor substantially as follows:

State of North Dakota)

) ss.

County of _____)

I, _____, do solemnly swear that:

1. I am a citizen of the United States.
2. Before becoming a resident of this state, I resided at _____ street, in the (town) (township) (city) of _____, county of _____ in the state of _____.
3. On the day of the next presidential election, I shall be at least eighteen years of age. I have been a resident of this state since _____, now residing at _____ street, in the (town) (township) (city) of _____, county of _____ in the state of North Dakota.
4. I have resided in _____ precinct for less than thirty days. I believe I am entitled under the laws of this state to vote at the presidential election to be held on November _____.
5. I apply for a presidential election ballot. I have not voted and will not vote otherwise than by this ballot at that election.

Signed _____

(Applicant)

(Applicant's telephone number)

Subscribed and sworn to before me this _____ day of _____.

Signed _____

(Title and name of officer

authorized to administer oaths)

SECTION 7. Section 16.1-13-38 of the North Dakota Century Code is created and enacted as follows:

16.1-13-38. Mailing duplicate application for presidential elector ballot.

The county auditor immediately shall mail a duplicate of the application for a presidential elector ballot to the appropriate official of the state in which the applicant last resided.

SECTION 8. Section 16.1-13-39 of the North Dakota Century Code is created and enacted as follows:

16.1-13-39. Filing and indexing applications for presidential elector ballots from other states.

The county auditor shall file each duplicate application for a presidential elector ballot or other official information received by the county auditor from another state indicating a former resident of this state has applied to vote at a presidential election in another state and shall maintain an alphabetical index of the information for four months after the election.

SECTION 9. Section 16.1-13-40 of the North Dakota Century Code is created and enacted as follows:

16.1-13-40. Delivery of presidential elector ballot to applicant.

If the county auditor is satisfied the application is proper and the applicant is qualified to vote at the presidential election, the county auditor shall deliver a ballot for presidential electors to the applicant no sooner than thirty days nor later than one day before the next presidential election.

SECTION 10. Section 16.1-13-41 of the North Dakota Century Code is created and enacted as follows:

16.1-13-41. Voting by new residents for presidential electors.

1. The applicant, upon receiving the ballot for presidential electors, immediately shall mark the ballot in the presence of the county auditor but in a manner the official cannot know how the ballot is marked. The applicant subsequently shall fold the ballot in the county auditor's presence to conceal the markings and deposit and seal the ballot in an envelope furnished by the county auditor.
2. The voter shall enclose the envelope containing the ballot in a carrier envelope which must be sealed securely. There must be imprinted on the outside of the carrier envelope a statement substantially as follows:

CERTIFICATION OF NEW RESIDENT VOTER

I have qualified as a new resident voter in this state to vote for presidential electors. I have not applied nor do I intend to apply for an absent voter's ballot from the state from which I have relocated. I have not voted and I will not vote otherwise than by this ballot.

Dated _____

Witness _____

County Auditor

(Signature of Voter)

3. The voter shall sign the certification upon the carrier envelope and subsequently shall deliver the sealed carrier envelope to the county auditor who shall keep the carrier envelope in the county auditor's office until delivered by the county auditor to the inspector of elections of the county absentee ballot precinct.

SECTION 11. Section 16.1-13-42 of the North Dakota Century Code is created and enacted as follows:

16.1-13-42. List of applicants requesting presidential elector ballots open for public inspection.

The county auditor shall keep open for public inspection a list of all individuals who have applied to vote for presidential electors as new residents with their names, addresses, and application dates for two years.

SECTION 12. Section 16.1-13-43 of the North Dakota Century Code is created and enacted as follows:

16.1-13-43. Delivery and processing of presidential elector ballots of new residents.

1. The county auditor shall deliver the presidential elector ballots for new residents to the inspector of elections in the manner prescribed by law for absentee ballots. The ballots must be processed in accordance with the law for absentee ballots.
2. The inspector of elections shall record the new resident voter's name with a notation designating the individual as a new resident voting for presidential electors only.

SECTION 13. Section 16.1-13-44 of the North Dakota Century Code is created and enacted as follows:

16.1-13-44. Application of other statutes to presidential elector ballots.

Except as provided in sections 16.1-13-35 through 16.1-13-44, the provisions of law relating to absent voters' ballots apply also to the casting and counting of presidential elector ballots of new residents, the furnishing of election supplies, ballots, canvassing of ballots, and making proper returns of the results of the election.

SECTION 14. AMENDMENT. Section 16.1-13-44 of the North Dakota Century Code, as created by section 13 of this Act, is amended and reenacted as follows:

16.1-13-44. Application of other statutes to presidential elector ballots.

Except as provided in section 16.1-14-29 and sections 16.1-13-35 through 16.1-13-44, the provisions of law relating to absent voters' ballots also apply to the casting and counting of presidential elector ballots of new residents, the furnishing of election supplies, ballots, canvassing of ballots, and making proper returns of the results of the election.

SECTION 15. AMENDMENT. Section 16.1-14-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-14-01. Canvassing votes for presidential electors - Tie vote.

The state canvassing board, in examining and making a statement of the votes for, and in determining and certifying the ~~persons~~individuals chosen as, presidential electors, shall proceed in the manner prescribed in this title for the canvass of votes for state officers. The secretary of state likewise shall file and record ~~such~~the statement and determination. In canvassing the returns for presidential electors, the group of electors having the greatest number of votes is to be declared elected. If two or more groups of electors are found to have an equal and the greatest number of votes, the election of one group must be determined by a drawing of names, with the governor drawing the names in the presence of the other members of the state canvassing board.

SECTION 16. AMENDMENT. Section 16.1-14-03 of the North Dakota Century Code is amended and reenacted as follows:

16.1-14-03. Proclamation of result by governor - Publishing - Certificate of election.

Within ten days after the state canvassing board completes the canvass of the votes cast for presidential electors, as certified by the auditors of the respective counties, the governor shall declare by proclamation, to be printed in the official county newspaper printed and published at the seat of government, the names of the ~~persons~~individuals who have received the highest number of votes returned for ~~such~~the office of presidential elector. If the election of ~~such person~~the individuals has not been contested by notice of contest having been filed with the governor within ten days after the date of ~~such~~the proclamation, ~~then such persons must be~~the individuals are deemed elected, and the governor shall transmit a certificate of election to each ~~person~~so chosen a certificate of election individual.

SECTION 17. AMENDMENT. Section 16.1-14-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-14-08. Contestant may apply to board.

A group of electors appearing, ~~by the~~of a presidential candidate not listed in the proclamation of the governor, ~~to have issued according to section 16.1-14-03 and who received not less than at least~~one-fifth of the votes cast at an election for presidential electors, as certified by the state canvassing board, may apply to the board provided for in section 16.1-14-07 for a declaration of election as presidential electors.

SECTION 18. AMENDMENT. Section 16.1-14-09 of the North Dakota Century Code is amended and reenacted as follows:

16.1-14-09. Application to state grounds of contest.

The application provided for in section 16.1-14-08 must be made by petition in writing ~~to be and~~filed in the office of the secretary of state within ten days from the date of the proclamation provided for in section 16.1-14-03. The petition, regardless of its mode of delivery, must be in the possession of the secretary of state before four p.m. on the tenth day as provided in this section, and the secretary of state shall convene the board ~~forthwith for the trial of contests of elections for presidential elections~~. The petition must set forth the names of the ~~persons~~individuals whose election is contested and the ground for such contest. The petitioner, before any proceedings are had upon the petition, except the convening of the board, shall file a bond to this state in a sum and with ~~such~~surety as the board shall order, conditioned for the payment of all costs incurred in the prosecution of ~~such~~the contest in the case the contestants do not prevail.

SECTION 19. AMENDMENT. Section 16.1-14-10 of the North Dakota Century Code is amended and reenacted as follows:

16.1-14-10. Notice to ~~persons~~individuals contested.

Upon the filing of the petition and bond as provided in section 16.1-14-09, the board for the trial of ~~an election contest~~contests of elections for presidential elections shall order written notice of the petition to be given to the governor and to the ~~persons~~individuals whose election is contested. Notice ~~must~~also must be published in a newspaper as the board shall order. ~~Notices provided for~~A notice required by this section must contain a concise statement of the facts alleged in the petition and a designation of the time and place fixed by the board for the hearing, ~~which~~The hearing must be not less than three nor more than fifteen days from the filing of the petition.

SECTION 20. AMENDMENT. Section 16.1-14-11 of the North Dakota Century Code is amended and reenacted as follows:

16.1-14-11. Appearance by parties to contest.

At the time fixed for the hearing, the petitioners shall appear and produce their evidence, and the ~~persons~~individuals whose election is contested may appear and produce evidence in ~~their~~the

individuals' behalf. Any party to the contest proceedings may appear in person or by attorney, and no other person is entitled to be made a party to the proceedings or to be heard personally or by counsel ~~therein~~. If more than one petition is pending, the board, in its discretion, may order the contests to be heard together.

SECTION 21. AMENDMENT. Section 16.1-14-12 of the North Dakota Century Code is amended and reenacted as follows:

16.1-14-12. Hearing - How conducted.

The board shall hear the contest and decide all questions of law and fact involved. The burden of proof in each case ~~must be upon~~ is on the petitioners, ~~and the~~. ~~The hearing must be~~ is confined to the grounds stated in the petition, but the board ~~in its discretion may allow the petition to be amended~~. ~~No~~ ~~ex~~ ~~parte~~ affidavits ~~shall be~~ are not competent evidence at the hearing. ~~A person~~ An individual may not be excused from testifying or from producing papers or documents at the hearing on the grounds ~~that~~ ~~such~~ ~~the~~ testimony will tend to incriminate the ~~person~~ individual, but ~~no person~~ an individual testifying may not be subject to any suit or prosecution, civil or criminal, for any matter or cause in respect to which the ~~person~~ individual is examined or to which the ~~person's~~ individual's testimony relates. The board has the same power to compel the attendance of witnesses as the district courts of this state possess, and nothing ~~contained~~ in this chapter ~~may be held to limit~~ limits the power of the board to make ~~such~~ regulations as to the conduct of the proceedings as ~~it may deem~~ the board deems proper, not inconsistent with the provisions of this chapter. The board has all powers necessary to the complete performance of the duties and authority conferred upon ~~it~~ the board by this chapter.

SECTION 22. AMENDMENT. Section 16.1-14-13 of the North Dakota Century Code is amended and reenacted as follows:

16.1-14-13. Certification of determination of board.

The board shall determine in each case which of the parties to the proceedings are entitled to the office of elector, and shall cause ~~its~~ the board's determination to be entered of record in a manner and form as ~~it~~ the board shall direct, and shall certify the same to the governor and secretary of state. The certified determination is a final and conclusive ~~that~~ determination the ~~persons~~ individuals identified in the determination are duly elected. The governor shall transmit ~~to such persons their~~ certificates of election to the individuals, and every ~~such~~ certificate must recite ~~that~~ the certificate is issued pursuant to a determination under ~~the provisions of~~ this chapter.

SECTION 23. AMENDMENT. Section 16.1-14-14 of the North Dakota Century Code is amended and reenacted as follows:

16.1-14-14. Failure of petitioners to appear - Effect.

If any petitioners fail to appear and prosecute their petition against the ~~persons~~ individuals who have been made respondents ~~therein~~, according to the requirements of this chapter and of any rules made by the board, the board shall determine ~~that they~~ the petitioners have failed, and shall cause the determination to be entered of record in ~~such~~ the manner and form as ~~it~~ the board shall direct, and ~~forthwith~~ shall certify the determination to the governor and secretary of state. The determination is a final and conclusive bar to the claim of the petitioners against ~~such~~ the respondents as fully and completely as if the claim had been heard and determined on its merits, and the governor shall issue certificates of election as provided in section 16.1-14-13.

SECTION 24. Chapter 16.1-14.1 of the North Dakota Century Code is created and enacted as follows:

16.1-14.1-01. Definitions.

In this chapter:

1. "Cast" means accepted by the secretary of state in accordance with subsection 2 of section 16.1-14.1-06.
2. "Elector" means an individual selected as a presidential elector under chapter 16.1-14 and this chapter.
3. "President" means president of the United States.
4. "Vice president" means vice president of the United States.

16.1-14.1-02. Designation of state's electors.

For each elector position in this state, a political party contesting the position shall submit to the secretary of state the names of two qualified individuals. One of the individuals must be designated as the elector nominee and the other as the alternate elector nominee. Except as otherwise provided in sections 16.1-14.1-04 through 16.1-14.1-07, this state's electors are the winning elector nominees under the laws of this state.

16.1-14.1-03. Pledge.

Each elector nominee and alternate elector nominee of a political party shall execute the following pledge: "If selected for the position of elector, I agree to serve and to mark my ballots for president and vice president for the nominees for those offices of the party that nominated me." The executed pledge must accompany the submission of the corresponding names to the secretary of state.

16.1-14.1-04. Certification of electors.

In submitting this state's certificate of ascertainment as required by 3 U.S.C. 6, the governor shall certify this state's electors and state in the certificate:

1. The electors shall serve as electors unless a vacancy occurs in the office of elector before the end of the meeting at which elector votes are cast, in which case a substitute elector shall fill the vacancy; and
2. If a substitute elector is appointed to fill a vacancy, the governor shall submit documentation of the vacancy, the method by which the vacancy was filled, and the names on the final list of this state's electors.

16.1-14.1-05. Presiding officer - Elector vacancy.

1. The governor shall preside at the meeting of electors described in section 16.1-14.1-06.
2. The position of an elector not present to vote is vacant. The secretary of state shall appoint an individual as a substitute elector to fill a vacancy as follows:
 - a. If the alternate elector is present to vote, by appointing the alternate elector for the vacant position;
 - b. If the alternate elector for the vacant position is not present to vote, by appointing an elector chosen by lot from among the alternate electors present to vote who were nominated by the same political party;
 - c. If the number of alternate electors present to vote is insufficient to fill any vacant position pursuant to subdivisions a and b, by appointing any immediately available individual who is qualified to serve as an elector and chosen through nomination by and plurality vote of the remaining electors, including nomination and vote by a single elector if only one remains;

- d. If there is a tie between at least two nominees for substitute elector in a vote conducted under subdivision c, by appointing an elector chosen by lot from among those nominees; or
 - e. If all elector positions are vacant and cannot be filled pursuant to subdivisions a through d, by appointing a single presidential elector, with remaining vacant positions to be filled under subdivision c and, if necessary, subdivision d.
3. To qualify as a substitute elector under subsection 2, an individual who has not executed the pledge required under section 16.1-14.1-03 shall execute the following pledge: "I agree to serve and to mark my ballots for president and vice president consistent with the pledge of the individual to whose elector position I have succeeded."

16.1-14.1-06. Elector voting.

1. At the time designated for elector voting and after all vacant positions have been filled under section 16.1-14.1-05, the secretary of state shall provide each elector with a presidential and a vice presidential ballot. The elector shall mark the elector's presidential and vice presidential ballots with the elector's votes for the offices of president and vice president, respectively, along with the elector's signature and the elector's legibly printed name.
2. Except as otherwise provided by law other than this chapter, each elector shall present both completed ballots to the secretary of state, who shall examine the ballots and accept as cast all ballots of electors whose votes are consistent with their pledges executed under section 16.1-14.1-03 or subsection 3 of section 16.1-14.1-05. Except as otherwise provided by law other than this chapter, the secretary of state may not accept and may not count either an elector's presidential or vice presidential ballot if the elector has not marked both ballots or has marked a ballot in violation of the elector's pledge.
3. An elector who refuses to present a ballot, presents an unmarked ballot, or presents a ballot marked in violation of the elector's pledge executed under section 16.1-14.1-03 or subsection 3 of section 16.1-14.1-05 vacates the office of elector, creating a vacant position to be filled under section 16.1-14.1-05.
4. The secretary of state shall distribute ballots to and collect ballots from a substitute elector and repeat the process under this section of examining ballots, declaring and filling vacant positions as required, and recording appropriately completed ballots from the substituted electors, until all of this state's electoral votes have been cast and recorded.

16.1-14.1-07. Elector replacement - Associated certificates.

1. After the vote of this state's electors is completed, if the final list of electors differs from any list that the governor previously included on a certificate of ascertainment prepared and transmitted under 3 U.S.C. 6, the secretary of state immediately shall prepare documentation of the vacancy, the method by which the vacancy was filled, and the names of the final list of electors and transmit the documentation to the governor for the governor's signature.
2. The governor immediately shall deliver the signed documentation to the secretary of state and a signed duplicate original of the documentation to all individuals entitled to receive this state's certificate of ascertainment, indicating that the signed documentation is to be substituted for the certificate of ascertainment previously submitted.
3. The secretary of state shall prepare a certificate of vote. The electors on the final list shall sign the certificate. The secretary of state shall process and transmit the signed certificate with the signed documentation under 3 U.S.C. 9, 10, and 11.

SECTION 25. REPEAL. Sections 16.1-14-05, 16.1-14-18, 16.1-14-19, 16.1-14-20, 16.1-14-21, 16.1-14-22, 16.1-14-23, 16.1-14-24, 16.1-14-25, 16.1-14-26, 16.1-14-27, and 16.1-14-28 of the North Dakota Century Code are repealed.

SECTION 26. CONTINGENT EFFECTIVE DATE. Section 14 of this Act becomes effective at the time provided in Senate Bill No. 2271 if section 16.1-14-29, as created by Senate Bill No. 2271, is approved by the sixty-seventh legislative assembly.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1078.

House Vote: Yeas 85 Nays 8 Absent 1

Senate Vote: Yeas 45 Nays 2 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State