Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003

SENATE BILL NO. 2248

(Senators Fischer, Traynor, Trenbeath)

(Representatives Delmore, Devlin, Price)

AN ACT to create and enact three new sections to chapter 16.1-07 of the North Dakota Century Code, relating to providing absentee voting information to military and overseas voters, rejecting absentee ballots cast by military and overseas voters, and creating early voting precincts; and to amend and reenact subsection 2 of section 16.1-07-01 and sections 16.1-07-05, 16.1-07-06, 16.1-07-07, and 16.1-07-08 of the North Dakota Century Code, relating to absentee voting for federal offices by citizens who have never lived in the United States, applications for absent voter's ballots, and absentee voting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 16.1-07-01 of the North Dakota Century Code is amended and reenacted as follows:

2.   A qualified elector who is a citizen of the United States and lives outside the United States or a citizen of the United States who is eighteen years of age or older and has never lived in the United States and whose parent is a qualified elector of the state may vote absentee in this state pursuant to this chapter if the individual:

    a.   Does not maintain a domicile;

    b.   Is not registered to vote;

    c.   Is not voting in any other state, territory, or possession of the United States; and

    d.   Possesses a valid passport or card of identity and registration issued under the authority of the secretary of state of the United States.

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

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

16.1-07-05. Time for applying for ballot. At any time in an election year, any qualified elector may apply to the county auditor, the auditor or clerk of the city, or the business manager of the school district, as the case may be, by facsimile or otherwise, for an official ballot to be voted at that election. A voter may obtain an application form for an absent voter's ballot for a general, special, primary, or county election from either the county auditor or a city auditor. The application form, for a member of the United States armed forces or the United States merchant marine or for a qualified elector living outside the United States, must include a space for the applicant to indicate whether the application is for all statewide elections in the calendar year or only for the election that is immediately after the date of the application. An applicant who is a member of the United States armed forces or the United States merchant marine living outside the United States or is a qualified elector living outside the United States may apply for and vote by facsimile if otherwise qualified to apply for and vote by absentee ballot. An auditor, clerk, or business manager may send and receive facsimile absentee ballot applications and facsimile absentee ballots to any individual eligible to apply for and vote by facsimile under this section. No auditor or clerk may issue ballots for absentee voters on the day of the

election except to persons prevented from voting in person on the day of the election due to an emergency. A person requesting an absentee ballot on the day of the election due to an emergency must do so through an agent as set forth in this chapter. An agent may represent only one person. The absentee ballot must be returned to the county auditor's office by four p.m. on the day of the election.

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

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

16.1-07-06. Application form.

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

   a. The applicant's name.

   b. The applicant's voting residential address.

   c. The applicant's mailing address.

   d. The applicant's current home telephone number.

   e. The election for which the ballot is being requested.

   f. The date of the request.

   g. An affirmation that the applicant has resided, or will reside, in the precinct for at least thirty days next preceding the election.

   h. The applicant's signature.

   i. A space for the voter to include the voter's precinct or voting location, if known.

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

2. A qualified elector absent from the state is not required to file an application for an absent voter's ballot for any statewide election if either of the following apply:

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

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

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

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

16.1-07-07. Delivering application ~~blank~~ form for ballot. The officers specified in section 16.1-07-05, upon request, shall mail an application ~~blank~~ form for an absent voter's ballot to the voter, or they may deliver the application ~~blank~~ form to the voter upon a personal application made at the officer's office. The officers may also make available or distribute the applications, prescribed by the secretary of state, to the public without any specific request being made for the applications.

SECTION 5. AMENDMENT. Section 16.1-07-08 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been prepared, the county auditor, city auditor, or business manager of the school district, as the case may be, shall send to the absent voter by mail, at the expense of the political subdivision conducting the election, one official ballot, or personally deliver the ballot to the applicant or the applicant's agent, which agent may not, at that time, be a candidate for any office to be voted upon by the absent voter. The agent shall sign the agent's name before receiving the ballot and deposit with the auditor or business manager of the school district, as the case may be, authorization in writing from the applicant to receive the ballot or according to requirements set forth for signature by mark. The auditor or business manager of the school district, as the case may be, may not provide an absent voter's ballot to a person acting as an agent who cannot provide a signed, written authorization from an applicant. No person may receive compensation, including money, goods, or services, for acting as an agent for an elector, nor may a person act as an agent for more than four electors in any one election. A voter voting by absentee ballot may not require the political subdivision providing the ballot to bear the expense of the return postage for an absentee ballot.

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

   Precinct _____
   Name _____
   Residential Address _____
   City _____ ND Zip Code _____
   Under penalty of possible criminal prosecution for making a false
   statement, I swear that I reside at the residential address provided
   above, that I have resided in my precinct for at least thirty days
   next preceding the election, and this is the only ballot I will cast
   in this election.
   Applicant's Signature _____
   Date _____

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

3. The county auditor, city auditor, or business manager of the school district, as the case may be, may challenge the right of anyone to vote an absent voter's ballot whom that officer knows or has reason to believe is not a qualified elector. When challenging a voter who has applied for an absentee voter's ballot, the election official shall follow the

procedures and use the affidavit provided for in section 16.1-05-06 and include a voter's affidavit with the outgoing absentee voter's ballot along with an explanation that the voter's right to vote is being challenged and that the voter's affidavit must be completed and returned with the voter's absentee voter's ballot to be accepted.

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

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

SECTION 6. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Early voting precinct - Election board appointment - Closing and canvassing.

1. For any primary, general, or special statewide, district, or county election, the board of county commissioners may, before the sixtieth day before the day of the election, create a special precinct, known as an early voting precinct, to facilitate the conduct of early voting in that county according to chapters 16.1-13 and 16.1-15. The election board of the early voting precinct must be known as the early voting precinct election board. The county auditor shall supply the board with all necessary election supplies as provided in chapter 16.1-06.

2. If the board of county commissioners establishes an early voting precinct according to this section, the following provisions apply:

   a. Early voting must be authorized during the fifteen days immediately before the day of the election. The county auditor shall designate the business days and times during which the early voting election precinct will be open and publish notice of the dates and times in the official county newspaper once each week for three consecutive weeks immediately before the day of the election.

   b. The county auditor shall appoint the early voting precinct election board that consists of one independent representative to act as the inspector and an equal number of representatives from each political party represented on an election board in the county, as set out in section 16.1-05-01, to act as judges. Each official of the board shall take the oath required by section 16.1-05-02 and must be compensated as provided in section 16.1-05-05.

   c. The county auditor shall designate a space in a government-controlled facility, accessible to the elderly and the physically disabled as provided in section 16.1-04-02, to locate the early voting precinct.

   d. At the close of each day of early voting, the inspector, along with a judge from each political party represented on the board shall secure all election related materials, including:

      (1) The pollbooks and access to any electronically maintained pollbooks.

      (2) Any stamp and inkpad.

      (3) The ballot boxes containing voted ballots.

        (4)   Any void, spoiled, and unvoted ballots.

    e.   Ballot boxes containing ballots cast at an early voting precinct may not be opened until the day of the election.

    f.   The early voting precinct may be closed, as provided in chapter 16.1-15, at the end of the last business day designated for early voting in the county. Results from the early voting precinct may be counted, canvassed, or released under chapter 16.1-15 as soon as any precinct within the county, city, or legislative district closes its polls on the day of the election. The county auditor shall designate a location for the closing, counting, and canvassing process under chapter 16.1-15, which location must be open to any person for the purpose of observing.

    g.   The early voting precinct election board shall comply with the requirements of chapters 16.1-05, 16.1-13, and 16.1-15, as applicable.

SECTION 7. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to provide information regarding absentee voting for military and overseas voters. The secretary of state is designated as the official responsible for providing information regarding absentee voting by military and overseas citizens eligible to vote in the state according to section 702 of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 1973ff-1]. The secretary of state shall develop and provide uniform procedures for county auditors to follow when transmitting and receiving applications for absentee ballots to and from military and overseas voters.

SECTION 8. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Notification of rejected absentee ballots cast by military and overseas voters. The secretary of state shall establish a uniform procedure for county auditors to follow when notifying a military or overseas voter that the voter's absentee ballot was rejected. The procedure must provide that the notice include the reason why the voter's absentee ballot was rejected as provided by section 707 of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 1973ff-1].

_____   _____
President of the Senate   Speaker of the House

_____   _____
Secretary of the Senate   Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2248.

Senate Vote: Yeas   46   Nays   0   Absent   1

House Vote: Yeas   92   Nays   0   Absent   2

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Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

_____
Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

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Secretary of State