

SENATE BILL NO. 2336

Introduced by

Senator Krebsbach

Representative Haas

1 A BILL for an Act to amend and reenact sections 16.1-01-04, 16.1-07-01, 16.1-07-05,
2 16.1-07-06, 16.1-07-08, 16.1-07-08.1, and 16.1-07-12 of the North Dakota Century Code,
3 relating to absentee voting.

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

5 **SECTION 1. AMENDMENT.** Section 16.1-01-04 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **16.1-01-04. Qualifications of electors.**

- 8 1. Every citizen of the United States who is eighteen years or older; a resident of this
9 state; and has resided in the precinct at least thirty days next preceding any
10 election, except as otherwise provided in regard to residency in chapter 16.1-14, is
11 a qualified elector.
- 12 2. For the purposes of this title, every qualified elector may have only one residence,
13 shown by an actual fixed permanent dwelling, establishment, or any other abode.
- 14 3. Except as otherwise provided in this section, an individual's residence must be
15 determined in accordance with the rules for determining residency as provided in
16 section 54-01-26.
- 17 4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by
18 individuals convicted and sentenced for treason or felony must be limited according
19 to chapter 12.1-33.
- 20 5. For the purposes of this title, an individual may not be deemed to have gained or
21 lost a residence solely by reason of the individual's presence or absence while
22 enrolled as a student at a college, university, or other postsecondary institution of
23 learning in this state.

- 1 6. For the purposes of this title, a member of the armed forces of the United States
2 may not be deemed to have gained or lost a residence in this state solely by
3 reason of the member being stationed on duty in this state.
- 4 7. For the purposes of this title, an individual may not be deemed to have lost
5 residence in the individual's precinct or in the state by reason of the individual
6 engaging in temporary government service or private employment outside the
7 individual's precinct or outside the state. As used in this title, "temporary" means a
8 period of time equal to or less than four years.
- 9 8. A qualified elector who does not retain a residence as described in subsection 2,
10 who moved away from the United States immediately upon leaving North Dakota,
11 and who has lived outside of the United States for a period of more than four years
12 will be considered a qualified elector for North Dakota federal elective offices in the
13 precinct in which the voter last lived.

14 **SECTION 2. AMENDMENT.** Section 16.1-07-01 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **16.1-07-01. Absent voter - Who may vote.**

- 17 1. Any qualified elector of this state, including an individual who is in the armed forces
18 of the United States, is in the merchant marine of the United States, or is a United
19 States citizen living outside the United States for a period of four years or less who
20 resided in this state immediately prior to the individual's departure from the United
21 States, may vote an absent voter's ballot at any general, special, or primary state
22 election, any county election, or any city or school district election.
- 23 2. A qualified elector who is a citizen of the United States ~~and~~, lives outside the
24 United States, who resided in this state immediately before the individual's
25 departure from the United States, and has lived away from the United States for a
26 period of four years or more or a citizen of the United States who is eighteen years
27 of age or older ~~and~~, has never lived in the United States, and whose parent is a
28 qualified elector of the state may vote absentee in this state pursuant to this
29 chapter if the individual:
30 a. Does not maintain a domicile;

- 1 b. Is not registered to vote in any other state, territory, or possession of the
2 United States;
- 3 c. Is not voting in any other state, territory, or possession of the United States;
4 and
- 5 d. Possesses a valid passport or card of identity and registration issued under
6 the authority of the secretary of state of the United States.

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

- 11 3. An elector who votes by absentee ballot may not vote in person at the same
12 election.

13 **SECTION 3. AMENDMENT.** Section 16.1-07-05 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **16.1-07-05. Time for applying for ballot - Uniformed and overseas citizens**
16 **applications and voting - Emergency situations - Sufficient time for application and**
17 **ballot return.**

- 18 1. At any time in an election year, any qualified elector may apply to the county
19 auditor, the auditor or clerk of the city, or the business manager of the school
20 district, as the case may be, by facsimile or otherwise, for an official ballot to be
21 voted at that election. A voter may obtain an application form for an absent voter's
22 ballot for a general, special, primary, or county election from either the county
23 auditor or a city auditor. The application form, ~~for a member of the United States~~
24 ~~armed forces or the United States merchant marine or for a qualified elector living~~
25 ~~outside the United States~~, must include a space for the applicant to indicate
26 whether the application is for all statewide elections in the calendar year or only for
27 the election that is immediately after the date of the application.
- 28 2. An applicant who is a qualified elector and on active duty as a member of the
29 United States armed forces or the United States merchant marine may receive an
30 absentee ballot by mail, facsimile, or electronic mail. In the event that returning the
31 voted ballot by mail is not practicable, qualified electors meeting the stated criteria

- 1 of this subsection may return a voted ballot and other required documents to the
2 county auditor by means of facsimile transmission or electronic mail. To return a
3 voted ballot and other required documents by electronic mail, the eligible voter
4 must have access to the technology to scan the documents, save the documents in
5 a secure format approved by the secretary of state, and return the documents as
6 an electronic mail attachment directly to the electronic mail address assigned by
7 the auditor, clerk, or business manager for that purpose prior to midnight in the
8 voter's county of residence on the day before the election. The secretary of state
9 shall develop written guidelines relating to security measures for voted ballots
10 returned by electronic mail.
- 11 3. Spouses, children, or other dependents of active duty members of the United
12 States armed forces or merchant marine who are qualified electors and stationed
13 as a family outside the United States are granted the same absentee voting rights
14 as the individual's spouse, parent, or guardian has under subsection 2.
- 15 4. An applicant who is a ~~member of the United States armed forces or the United~~
16 ~~States merchant marine living outside the United States or is a~~ qualified elector
17 living outside the United States may apply for and vote by facsimile if otherwise
18 qualified to apply for and vote by absentee ballot. An auditor, clerk, or business
19 manager may send and receive facsimile absentee ballot applications and
20 facsimile absentee ballots to any individual eligible to apply for and vote by
21 facsimile under this section.
- 22 5. No auditor or clerk may issue ballots for absentee voters on the day of the election
23 except to persons prevented from voting in person on the day of the election due to
24 an emergency. A person requesting an absentee ballot on the day of the election
25 due to an emergency must do so through an agent as set forth in this chapter. An
26 agent may represent only one person. The absentee ballot must be returned to the
27 county auditor's office by four p.m. on the day of the election.
- 28 6. A completed application must be submitted to the appropriate election official in a
29 timely manner so as to allow the applicant to receive, complete, and mail the
30 absent voter's ballot before the day of the election.

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

3 **16.1-07-06. Application form.**

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

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

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

24 2. ~~A~~ The application for a qualified elector absent from the state is not required to file
25 ~~an application for an absent voter's ballot for any statewide election if either of the~~
26 ~~following apply~~ serving on active duty as a member of the United States armed
27 forces, merchant marine, or a family member who is a qualified elector and
28 stationed outside the United States together with the individual's spouse, parent, or
29 guardian must include the following additional information if the voter desires to
30 vote by facsimile or electronic mail:

- 1 a. ~~The elector is a member, or spouse or dependent of a member, of the United~~
2 ~~States armed forces or merchant marine living outside the United States.~~
3 Facsimile telephone number; or
4 b. ~~The elector is a United States citizen living outside the United States~~
5 Electronic mail address.
6 ~~If the qualified elector furnishes the county auditor with a current mailing address~~
7 ~~and the elector's residential address, the county auditor either shall mail to the~~
8 ~~qualified elector a ballot with a return envelope and instructions or send to the~~
9 ~~qualified elector the ballot and instructions by facsimile for voting for any statewide~~
10 ~~election in that calendar year.~~
11 3. The application for a qualified elector living outside the United States must include
12 a facsimile telephone number if the voter desires to vote by facsimile.

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

15 **16.1-07-08. Delivering ballots - Envelope accompanying - Statement on**
16 **envelope - Challenging electors voting by absentee ballot - Inability of elector to sign**
17 **name.**

- 18 1. Upon receipt of an application for an official ballot properly filled out and duly
19 signed, or as soon thereafter as the official ballot for the precinct in which the
20 applicant resides has been prepared, the county auditor, city auditor, or business
21 manager of the school district, as the case may be, shall send to the absent voter
22 by mail, at the expense of the political subdivision conducting the election, one
23 official ballot, or personally deliver the ballot to the applicant or the applicant's
24 agent, which agent may not, at that time, be a candidate for any office to be voted
25 upon by the absent voter. The agent shall sign the agent's name before receiving
26 the ballot and deposit with the auditor or business manager of the school district,
27 as the case may be, authorization in writing from the applicant to receive the ballot
28 or according to requirements set forth for signature by mark. The auditor or
29 business manager of the school district, as the case may be, may not provide an
30 absent voter's ballot to a person acting as an agent who cannot provide a signed,
31 written authorization from an applicant. No person may receive compensation,

1 including money, goods, or services, for acting as an agent for an elector, nor may
2 a person act as an agent for more than four electors in any one election. A voter
3 voting by absentee ballot may not require the political subdivision providing the
4 ballot to bear the expense of the return postage for an absentee ballot.

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

10 Precinct _____

11 Name _____

12 Residential Address _____

13 City _____ ND Zip Code _____

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

19 Applicant's Signature _____

20 Date _____

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

26 3. ~~The county auditor, city auditor, or business manager of the school district, as the~~
27 ~~ease may be, may challenge the right of anyone to vote an absent voter's ballot~~
28 ~~whom that officer knows or has reason to believe is not a qualified elector. When~~
29 ~~challenging a voter who has applied for an absentee voter's ballot, the election~~
30 ~~official shall follow the procedures and use the affidavit provided for in section~~
31 ~~16.1-05-06 and include a voter's affidavit with the outgoing absentee voter's ballot~~

1 ~~along with an explanation that the voter's right to vote is being challenged and that~~
2 ~~the voter's affidavit must be completed and returned with the voter's absentee~~
3 ~~voter's ballot to be accepted.~~

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

9 5. 4. Each individual requesting an absent voter's ballot under this chapter who cannot
10 read the English language or who because of blindness or other disability is unable
11 to mark the voter's ballot, upon request, may receive the assistance of any person
12 of the voter's choice, other than the voter's employer, an officer or agent of the
13 voter's union, a candidate running in that election, or a relative of a candidate as
14 described in subsection 2 of section 16.1-05-02, in marking the voter's ballot.

15 **SECTION 6. AMENDMENT.** Section 16.1-07-08.1 of the North Dakota Century Code
16 is amended and reenacted as follows:

17 **16.1-07-08.1. Procedures for voting with special write-in or federal write-in**
18 **absentee ballot.**

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

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

28 3. Upon receipt of the application, the county auditor shall issue the special write-in
29 absentee ballot, which must be in the form prescribed by the secretary of state.
30 The ballot must permit the elector to vote by writing in a party preference for each

1 office, the names of specific candidates for each office, or the name of the person
2 whom the voter prefers for each office.

3 4. If the voter is temporarily residing outside the United States or is a member of the
4 United States armed forces, merchant marine, or a family member and a qualified
5 elector, the voter may use the federal write-in absentee ballot in general, special,
6 and primary elections for local, state, or federal offices.

7 5. If the voter is residing outside the United States, or is a member of the United
8 States armed forces, merchant marine, or a family member, and a qualified elector
9 stationed outside the United States, the voter may use the federal write-in
10 absentee ballot transmission envelope as an absentee ballot application
11 simultaneously with the submission of the federal write-in absentee ballot if the
12 voter is otherwise eligible to vote absentee in the jurisdiction where the request is
13 submitted.

14 **SECTION 7. AMENDMENT.** Section 16.1-07-12 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **16.1-07-12. Opening ballot - Voting or rejecting - Depositing in ballot box -**
17 **Preserving.** At any time between the opening and closing of the polls on election day, the
18 election judges of the relevant precinct first shall open the outer envelope and compare the
19 signature on such application for an absent voter's ballot with the signature on the statement
20 provided for in section 16.1-07-08. If the judges find that the statement is sufficient and that the
21 signatures correspond, and that the applicant is then a duly qualified elector of such precinct
22 and has not voted at the election, they shall open the absent voter's envelope in such manner
23 as not to destroy the statement thereon. They shall take out the ballot or ballots contained
24 therein without unfolding the same, or permitting the same to be opened or examined, and after
25 ~~stamping and initialing~~ or initialing the same as other ballots are ~~stamped and initialed~~ or
26 initialed, they shall deposit the ballot in the proper ballot box and show in the pollbook of the
27 election that the elector has voted. If the statement is found to be insufficient, or that the
28 signatures do not correspond, or that the applicant is not then a duly qualified elector of the
29 precinct, the vote may not be allowed, but without opening the absent voter's envelope, the
30 election inspector or election judge shall mark across the face thereof "rejected as defective" or
31 "rejected as not an elector", as the case may be. These rejected ballots are then turned over to

- 1 the county canvassing board for final determination of eligibility. The subsequent death of an
- 2 absentee voter after having voted by absentee ballot does not constitute grounds for rejecting
- 3 such ballot.