

HOUSE BILL NO. 1078

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to create and enact sections 16.1-13-35, 16.1-13-36, 16.1-13-37, 16.1-13-38,
2 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
3 16.1-14.1 of the North Dakota Century Code, relating to presidential elections and the adoption
4 of the Uniform Faithful Presidential Electors Act; to amend and reenact subsection 1 of section
5 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,
6 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
7 Dakota Century Code, relating to nominating presidential electors and alternate electors, and
8 presidential electors' roles and procedures; and to repeal sections 16.1-14-05, 16.1-14-18,
9 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,
10 16.1-14-26, 16.1-14-27, and 16.1-14-28 of the North Dakota Century Code, relating to the filling
11 of a vacancy of a presidential elector and voting of new and former residents at presidential
12 elections.

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

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

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

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

3 **16.1-06-06. General election ballots for persons authorized to vote for presidential**
4 **electors only - Prepared separately - General law governs.**

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

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

14 **16.1-12-02. Certificates of nomination by petition - Form and contents.**

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

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

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

18 **16.1-13-35. Eligibility of new residents to vote for presidential electors.**

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

- 23 1. The citizen otherwise possesses the substantive qualifications to vote in this state,
24 except the required residence; and
- 25 2. The citizen complies with the provisions of sections 16.1-13-37, 16.1-13-41, and
26 16.1-13-44.

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

29 **16.1-13-36. Eligibility of former residents to vote for presidential electors.**

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

1 residency requirement of that state may vote in this state for president and vice president only,
2 by applying for a separate ballot under section 16.1-13-37 at least one day before the election.
3 The requirements and procedure for former residents to vote are governed by sections
4 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
5 statements relative to new residents contained in those sections must be changed by the
6 county auditor and inspector of elections to comply with this section for this purpose.

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

9 **16.1-13-37. Application for presidential elector ballot by new residents.**

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

13 State of North Dakota)
14) ss.
15 County of _____)

16 I, _____, do solemnly swear that:

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

29 Signed _____

30 (Applicant)

31 _____

1 (Applicant's telephone number)

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

3 Signed _____

4 (Title and name of officer
5 authorized to administer oaths)

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

8 **16.1-13-38. Mailing duplicate application for presidential elector ballot.**

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

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

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

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

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

21 **16.1-13-40. Delivery of presidential elector ballot to applicant.**

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

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

28 **16.1-13-41. Voting by new residents for presidential electors.**

29 1. The applicant, upon receiving the ballot for presidential electors, immediately shall
30 mark the ballot in the presence of the county auditor but in a manner the official cannot
31 know how the ballot is marked. The applicant subsequently shall fold the ballot in the

1 **16.1-13-43. Delivery and processing of presidential elector ballots of new residents.**

2 1. The county auditor shall deliver the presidential elector ballots for new residents to the
3 inspector of elections in the manner prescribed by law for absentee ballots. The ballots
4 must be processed in accordance with the law for absentee ballots.

5 2. The inspector of elections shall record the new resident voter's name with a notation
6 designating the individual as a new resident voting for presidential electors only.

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

9 **16.1-13-44. Application of other statutes to presidential elector ballots.**

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

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

16 **16.1-14-01. Canvassing votes for presidential electors - Tie vote.**

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

26 **SECTION 15. AMENDMENT.** Section 16.1-14-03 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **16.1-14-03. Proclamation of result by governor - Publishing - Certificate of election.**

29 Within ten days after the state canvassing board completes the canvass of the votes cast
30 for presidential electors, as certified by the auditors of the respective counties, the governor
31 shall declare by proclamation, to be printed in the official county newspaper printed and

1 published at the seat of government, the names of the ~~persons~~individuals who have received
2 the highest number of votes returned for ~~such~~the office of presidential elector. If the election of
3 ~~such person~~the individuals has not been contested by notice of contest having been filed with
4 the governor within ten days after the date of ~~such~~the proclamation, ~~then such persons must~~
5 ~~be~~the individuals are deemed elected, and the governor shall transmit a certificate of election to
6 each ~~person~~ ~~so~~ chosen ~~a certificate of election~~individual.

7 **SECTION 16. AMENDMENT.** Section 16.1-14-08 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **16.1-14-08. Contestant may apply to board.**

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

15 **SECTION 17. AMENDMENT.** Section 16.1-14-09 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **16.1-14-09. Application to state grounds of contest.**

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

29 **SECTION 18. AMENDMENT.** Section 16.1-14-10 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **16.1-14-10. Notice to ~~persons~~individuals contested.**

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

10 **SECTION 19. AMENDMENT.** Section 16.1-14-11 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **16.1-14-11. Appearance by parties to contest.**

13 At the time fixed for the hearing, the petitioners shall appear and produce their evidence,
14 and the ~~persons~~individuals whose election is contested may appear and produce evidence in
15 ~~their~~the individuals' behalf. Any party to the contest proceedings may appear in person or by
16 attorney, and no other person is entitled to be made a party to the proceedings or to be heard
17 personally or by counsel ~~therein~~. If more than one petition is pending, the board, in its
18 discretion, may order the ~~contests~~ to be heard together.

19 **SECTION 20. AMENDMENT.** Section 16.1-14-12 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **16.1-14-12. Hearing - How conducted.**

22 The board shall hear the contest and decide all questions of law and fact involved. The
23 burden of proof in each case ~~must be upon~~is on the petitioners, ~~and the.~~ The hearing must be
24 confined to the grounds stated in the petition, but the board ~~in its discretion~~ may allow the
25 petition to be amended. ~~No ex~~Ex parte affidavits shall ~~be~~are not competent evidence at the
26 hearing. ~~A person~~An individual may not be excused from testifying or from producing papers or
27 documents at the hearing on the grounds ~~that such~~the testimony will tend to incriminate the
28 ~~person~~individual, but ~~no person~~an individual testifying may not be subject to any suit or
29 prosecution, civil or criminal, for any matter or cause in respect to which the ~~person~~individual is
30 examined or to which the ~~person's~~individual's testimony relates. The board has the same power
31 to compel the attendance of witnesses as the district courts of this state possess, and nothing

1 contained in this chapter ~~may be held to limit~~limits the power of the board to make such-
2 regulations as to the conduct of the proceedings as ~~it may deem~~the board deems proper, not
3 inconsistent with the provisions of this chapter. The board has all powers necessary to the
4 complete performance of the duties and authority conferred upon ~~the board~~ by this chapter.

5 **SECTION 21. AMENDMENT.** Section 16.1-14-13 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **16.1-14-13. Certification of determination of board.**

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

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

18 **16.1-14-14. Failure of petitioners to appear - Effect.**

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

27 **SECTION 23.** Chapter 16.1-14.1 of the North Dakota Century Code is created and enacted
28 as follows:

29 **16.1-14.1-01. Definitions.**

30 In this chapter:

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

7 **16.1-14.1-02. Designation of state's electors.**

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

13 **16.1-14.1-03. Pledge.**

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

19 **16.1-14.1-04. Certification of electors.**

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

- 22 1. The electors shall serve as electors unless a vacancy occurs in the office of elector
23 before the end of the meeting at which elector votes are cast, in which case a
24 substitute elector shall fill the vacancy; and
- 25 2. If a substitute elector is appointed to fill a vacancy, the governor shall submit ~~an-~~
26 ~~amended certificate of ascertainment stating~~documentation of the vacancy, the
27 method by which the vacancy was filled, and the names on the final list of this state's
28 electors.

29 **16.1-14.1-05. Presiding officer - Elector vacancy.**

- 30 1. The governor shall preside at the meeting of electors described in
31 section 16.1-14.1-06.

- 1 2. The position of an elector not present to vote is vacant. The secretary of state shall
2 appoint an individual as a substitute elector to fill a vacancy as follows:
3 a. If the alternate elector is present to vote, by appointing the alternate elector for
4 the vacant position;
5 b. If the alternate elector for the vacant position is not present to vote, by appointing
6 an elector chosen by lot from among the alternate electors present to vote who
7 were nominated by the same political party;
8 c. If the number of alternate electors present to vote is insufficient to fill any vacant
9 position pursuant to subdivisions a and b, by appointing any immediately
10 available individual who is qualified to serve as an elector and chosen through
11 nomination by and plurality vote of the remaining electors, including nomination
12 and vote by a single elector if only one remains;
13 d. If there is a tie between at least two nominees for substitute elector in a vote
14 conducted under subdivision c, by appointing an elector chosen by lot from
15 among those nominees; or
16 e. If all elector positions are vacant and cannot be filled pursuant to
17 subdivisions a through d, by appointing a single presidential elector, with
18 remaining vacant positions to be filled under subdivision c and, if necessary,
19 subdivision d.
20 3. To qualify as a substitute elector under subsection 2, an individual who has not
21 executed the pledge required under section 16.1-14.1-03 shall execute the following
22 pledge: "I agree to serve and to mark my ballots for president and vice president
23 consistent with the pledge of the individual to whose elector position I have
24 succeeded."

25 **16.1-14.1-06. Elector voting.**

- 26 1. At the time designated for elector voting and after all vacant positions have been filled
27 under section 16.1-14.1-05, the secretary of state shall provide each elector with a
28 presidential and a vice presidential ballot. The elector shall mark the elector's
29 presidential and vice presidential ballots with the elector's votes for the offices of
30 president and vice president, respectively, along with the elector's signature and the
31 elector's legibly printed name.

- 1 2. Except as otherwise provided by law other than this chapter, each elector shall present
2 both completed ballots to the secretary of state, who shall examine the ballots and
3 accept as cast all ballots of electors whose votes are consistent with their pledges
4 executed under section 16.1-14.1-03 or subsection 3 of section 16.1-14.1-05. Except
5 as otherwise provided by law other than this chapter, the secretary of state may not
6 accept and may not count either an elector's presidential or vice presidential ballot if
7 the elector has not marked both ballots or has marked a ballot in violation of the
8 elector's pledge.
- 9 3. An elector who refuses to present a ballot, presents an unmarked ballot, or presents a
10 ballot marked in violation of the elector's pledge executed under section 16.1-14.1-03
11 or subsection 3 of section 16.1-14.1-05 vacates the office of elector, creating a vacant
12 position to be filled under section 16.1-14.1-05.
- 13 4. The secretary of state shall distribute ballots to and collect ballots from a substitute
14 elector and repeat the process under this section of examining ballots, declaring and
15 filling vacant positions as required, and recording appropriately completed ballots from
16 the substituted electors, until all of this state's electoral votes have been cast and
17 recorded.

18 **16.1-14.1-07. Elector replacement - Associated certificates.**

- 19 1. After the vote of this state's electors is completed, if the final list of electors differs from
20 any list that the governor previously included on a certificate of ascertainment
21 prepared and transmitted under 3 U.S.C. 6, the secretary of state immediately shall
22 prepare ~~an amended certificate of ascertainment~~documentation of the vacancy, the
23 method by which the vacancy was filled, and the names of the final list of electors and
24 transmit ~~it~~the documentation to the governor for the governor's signature.
- 25 2. The governor immediately shall deliver the signed ~~amended certificate of~~
26 ascertainmentdocumentation to the secretary of state and a signed duplicate original
27 of the ~~amended certificate of ascertainment~~documentation to all individuals entitled to
28 receive this state's certificate of ascertainment, indicating that the ~~amended certificate~~
29 of ascertainmentsigned documentation is to be substituted for the certificate of
30 ascertainment previously submitted.

1 3. The secretary of state shall prepare a certificate of vote. The electors on the final list
2 shall sign the certificate. The secretary of state shall process and transmit the signed
3 certificate with the ~~amended certificate of ascertainment~~ signed documentation under
4 3 U.S.C. 9, 10, and 11.

5 **SECTION 24. REPEAL.** Sections 16.1-14-05, 16.1-14-18, 16.1-14-19, 16.1-14-20,
6 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
7 16.1-14-28 of the North Dakota Century Code are repealed.