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February 10, 2021

TO: Chairman Senator Diane Larson and Members of the Senate Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: HB 1078 – Adoption of Uniform Faithful Presidential Electors Act

In the Century Code, Chapter 16.1-14 is titled Presidential Electors. The new Chapter created by this bill is Chapter 16.1-14.1, the Uniform Faithful Presidential Electors Act.

Both Chapters are essential each four years for administrating North Dakota's Presidential Electoral College. However, to establish a seamless connection between the two Chapters, this bill transfers ten sections now located in the last third portion of Chapter 16.1-14, Presidential Electors, to Chapter 16.1-13, General Elections, where they are more appropriately located.

The ten sections being transferred cover a specific group of voters casting their votes in a general election for the office of president and are not related to the administration of Presidential Electors. The transfer happens in Section 4 beginning on page 3 through Section 13 on page 7.

To illustrate, see Exhibit A. It is a listing of sections currently located in Chapter 16.1-13, General Elections. Beginning in Section 4 on page 3, the current 16.1-14-18 through 16.1-14-27 will become the new sections 16.1-13-35 through 16.1-14-44 in Chapter 16.1-13, General Elections. They are being moved with no substantive changes and only with style edits. Exhibit B is a listing of sections currently in Chapter 16.1-14, Presidential Electors, with the sections marked that are being moved or repealed.

Section 1, page 1, lines 19-21: This section is in Chapter 16.1-03, Party Committee Organization, and clarifies that a political party is to select nominees and alternate nominees as presidential electors that are qualified electors of North Dakota.

Section 2, page 2, line 11: Changes the code cites to reflect the changes in this bill.

Section 3, page 3, lines 10 through 13: This section is in Chapter 16.1-12, Certificates of Nomination, to make the same changes as are being made in Section 1 of this bill.

Sections 4 through 13, pages 3 through 7: These sections are duplicates, except for style edits, of 16.1-14-18 through 16.1-14-27. To compare the text prior to it being moved, see Exhibit C, pages 3 through 5.

Section 4, page 3: No substantive change. (Exhibit C, page 3)

Section 5, page 3: No substantive change. (Exhibit C, page 3)

Section 6, page 4: No substantive change. (Exhibit C, page 4)

Section 7, page 5: No substantive change. (Exhibit C, page 4)

Section 8, page 5: No substantive change. (Exhibit C, page 4)

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Section 9, page 5: No substantive change. (Exhibit C, page 4)

Section 10, page 5: No substantive change. (Exhibit C, pages 4 and 5)

Section 11, page 6: No substantive change. (Exhibit C, page 5)

Section 12, pages 6 and 7: No substantive change. (Exhibit C, page 5)

Section 13, page 7: No substantive change. (Exhibit C, page 5)

Sections 14 through 22, pages 7 through 10: These nine sections are currently in and will remain in Chapter 16.1-14, Presidential Electors.

Section 14, page 7: Style and clarity edits.

Section 15, pages 7 and 8: Style and clarity edits.

Section 16, page 8: Style and clarity edits.

Section 17, page 8: Style and clarity edits.

Section 18, pages 8 and 9: Style and clarity edits.

Section 19, page 9: Style and clarity edits.

Section 20, pages 9 and 10: Style and clarity edits.

Section 21; page 10: Style and clarity edits.

Section 22, page 10: Style and clarity edits.

Section 23, pages 10 through 13: Creates the new Chapter 16.1-14.1, Uniform Faithful Presidential Electors Act.

# North Dakota Legislative Branch

## Chapter 16.1-13

*Exhibit A*

### General Elections

Section	Section Name
16.1-13-01	Date of general election
16.1-13-02	Officers to be elected at general election
16.1-13-03	Secretary of state to give notice to county auditor of officers to be elected
16.1-13-04	Candidates' names placed on official general election ballot
16.1-13-05	Notice of election - Contents - Publication with sample ballot
16.1-13-06	Defeated primary candidate ineligible to have name printed on general ballot - Exception
16.1-13-07	Preparation, printing, distributing, canvassing, and returning of no-party ballot
16.1-13-08	Filling vacancy in office of United States senator
16.1-13-08.1	Special election to fill a vacancy in the United States House of Representatives due to a catastrophic circumstance
16.1-13-09	Resignation of members of legislative assembly after certificate of election
16.1-13-10	Vacancy existing in office of member of legislative assembly
16.1-13-11	Vacancy occurring in legislative assembly during session - Duty of governor
16.1-13-12	Notice of special election
16.1-13-13	Canvassing and returning votes cast at elections to fill vacancies
16.1-13-14	Special election to fill vacancies - Party committee to call convention to nominate - Individual nominations
16.1-13-15	Notice of holding convention for special election - Manner of giving
16.1-13-16	Basis of representation at convention - How determined
16.1-13-17	Certificate of nomination by convention - Contents - Delivery
16.1-13-18	Two or more organizations filing certificates representing same party - Secretary of state to determine authorized organization - Review of determination
16.1-13-19	Election not to be held in room where alcoholic beverages sold
16.1-13-20	Examination of ballot box before opening of polls - Regulations for ballot box while polls are open
16.1-13-21	Producing, opening, and delivering ballots on election day
16.1-13-22	Delivering ballot to elector - Initialing
16.1-13-23	Preparation of ballot by elector - Depositing - Second-chance voting
16.1-13-24	Voting on electronic voting system devices
16.1-13-25	Elector may write name on ballot - Counting
16.1-13-26	Name written or pasted on ballot evidence of vote without marking X
16.1-13-27	Assistance to elector - Polling place accessibility
16.1-13-28	Penalty for requesting voter to vote in certain manner
16.1-13-29	Election booths or compartments - Number required - Expense
16.1-13-30	One person to occupy booth - Time limit in booth
16.1-13-31	Removal of ballot from polling place before closing of polls - Prohibited
16.1-13-32	Securing new ballot upon spoiling of others
16.1-13-33	Electronic voting systems - Election laws apply
16.1-13-34	Voters casting ballots after regular poll closings - Provisional ballots

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*Sections to  
Be added  
Sections 16.1-13-35  
Through 16.1-14-44*

# North Dakota Legislative Branch

## Chapter 16.1-14

*Exhibit B*

### Presidential Electors

Section	Section Name
16.1-14-01	Canvassing votes for presidential electors - Tie vote
16.1-14-02	Secretary of state to prepare certificates of election
16.1-14-03	Proclamation of result by governor - Publishing - Certificate of election
16.1-14-04	Meeting of presidential electors
16.1-14-05	Filling of vacancy existing in office of presidential elector
16.1-14-06	Compensation of presidential electors
16.1-14-07	Board for trial of contest of presidential electors - How constituted - Oath
16.1-14-08	Contestant may apply to board
16.1-14-09	Application to state grounds of contest
16.1-14-10	Notice to persons contested
16.1-14-11	Appearance by parties to contest
16.1-14-12	Hearing - How conducted
16.1-14-13	Certification of determination of board
16.1-14-14	Failure of petitioners to appear - Effect
16.1-14-15	Costs - Taxation
16.1-14-16	Determination of final hearing
16.1-14-17	Mileage and per diem of board members
16.1-14-18	Eligibility of new residents to vote
16.1-14-19	Eligibility of former residents to vote
16.1-14-20	Application for presidential ballot by new residents
16.1-14-21	Mailing duplicate application
16.1-14-22	Filing and indexing information from other states
16.1-14-23	Delivery of ballot to applicant
16.1-14-24	Voting by new residents
16.1-14-25	List of applicants open for public inspection
16.1-14-26	Delivery and processing of presidential elector ballots
16.1-14-27	Application of other statutes
16.1-14-28	Definition of state

*Repealed in New Chapter*

*Chapter 16.1-13-35*

*36*

*37*

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*41*

*42*

*43*

*" 44*

*Repealed*

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CHAPTER 16.1-14  
PRESIDENTIAL ELECTORS

Exhibit C

**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 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 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.

*Amended  
Sec 14  
page 7*

**16.1-14-02. Secretary of state to prepare certificates of election.**

The secretary of state shall prepare certificates of election for each presidential elector chosen at the election. Each certificate must be signed by the governor and the secretary of state and the great seal of the state must be affixed thereto. One certificate must be delivered to each of the electors chosen.

**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 who have received the highest number of votes returned for such office. If the election of such persons has not been contested by notice of contest having been filed with the governor within ten days after the date of such proclamation, then such persons must be deemed elected, and the governor shall transmit to each person so chosen a certificate of election.

*Amended  
Sec 15  
page 8*

**16.1-14-04. Meeting of presidential electors.**

Presidential electors shall meet at one p.m. in the office of the governor in the state capitol on the first Monday after the second Wednesday in December next following their appointments by election for the purpose of casting their ballots as members of the electoral college. The secretary of state shall notify the electors of the date of the meeting.

**16.1-14-05. Filling of vacancy existing in office of presidential elector.**

If a vacancy exists in the office of an elector for any reason, the electors present at the meeting provided for in section 16.1-14-04 shall first proceed to fill such vacancy by ballot by a plurality of the votes. When all the electors appear, or the vacancies have been filled as provided in this section, they shall proceed to perform the duties required of them by the constitution and laws of the United States.

**16.1-14-06. Compensation of presidential electors.**

The electors provided for in this chapter shall receive the same per diem and the same mileage as members of the legislative assembly.

**16.1-14-07. Board for trial of contest of presidential electors - How constituted - Oath.**

The board for the trial of contests of elections for presidential electors shall consist of the chief justice of the supreme court, who must be president of the board, and two judges of the district court designated by the governor. If the chief justice is unable to attend at such trial, the next senior judge on the supreme court shall preside in place of the chief justice. The secretary of state must be the clerk of the board, or in the secretary of state's absence or inability to act, the clerk of the supreme court must be the clerk. Each member of the board, before entering upon the discharge of the member's duties, shall take an oath, before the secretary of state or

some other officer qualified to administer oaths, that without fear, favor, affection, or hope of reward, the member will, to the best of the member's knowledge and ability, administer justice according to law and the facts of the case.

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

A group of electors appearing, by the proclamation of the governor, to have received not less than one-fifth of the votes cast at an election for presidential electors, may apply to the board provided for in section 16.1-14-07 for a declaration of election as presidential electors.

*Amended  
Sec 16  
page 8*

**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 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. The petition must set forth the names of the persons 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 contest in the case the contestants do not prevail.

*Amended  
Sec 17  
page 8*

**16.1-14-10. Notice to persons 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 shall order written notice of the petition to be given to the governor and to the persons whose election is contested. Notice must also be published in a newspaper as the board shall order. Notices provided for 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 must be not less than three nor more than fifteen days from the filing of the petition.

*Amended  
Sec 18  
page 9*

**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 whose election is contested may appear and produce evidence in their 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.

*Amended  
Sec 19  
page 9*

**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 the petitioners, and the hearing must be 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 competent evidence at the hearing. A person may not be excused from testifying or from producing papers or documents at the hearing on the grounds that such testimony will tend to incriminate the person, but no person so testifying may be subject to any suit or prosecution, civil or criminal, for any matter or cause in respect to which the person is examined or to which the person'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 the power of the board to make such regulations as to the conduct of the proceedings as it may deem 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 by this chapter.

*Amended  
Sec 20  
page 9*

**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 determination to be entered of record in a manner and form as it shall direct, and shall certify the same to the governor and secretary of state. The certified determination is final and conclusive that the persons stated therein are duly elected. The governor shall transmit to such persons their certificates of election, and every such certificate must recite that it is issued pursuant to a determination under the provisions of this chapter.

*Amended  
Section  
21  
page*

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

If any petitioners fail to appear and prosecute their petition against the persons who have been made respondents thereto, according to the requirements of this chapter and of any rules made by the board, the board shall determine that they have failed, and shall cause the determination to be entered of record in such manner and form as it 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 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.

*Amended  
Section  
22  
page 10*

**16.1-14-15. Costs - Taxation.**

The costs of an election contest under the provisions of this chapter must be taxed under the direction of the board. If two or more cases are heard together, the costs must be apportioned as the board shall direct. In each case in which the petitioners do not prevail, the costs must be paid by them, and in each case in which the petitioners prevail, the costs must be paid by the state. If the costs are required to be paid by the state, the board shall certify the costs to the office of management and budget, which shall issue a warrant upon the state treasurer in payment of the same.

**16.1-14-16. Determination of final hearing.**

The final hearing and determination under the provisions of this chapter must be by a majority of the board, but any single member may exercise any of the other powers given to the board by this chapter.

**16.1-14-17. Mileage and per diem of board members.**

The members of the board trying the presidential election contest must be compensated in the same manner as state officers pursuant to sections 44-08-04 and 54-06-09.

**16.1-14-18. Eligibility of new residents to vote.**

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

1. The citizen otherwise possesses the substantive qualifications to vote in this state, except requirement of residence; and
2. The citizen complies with the provisions of sections 16.1-14-18 through 16.1-14-28.

*New  
16.1-13-35  
page 3  
sec 4*

**16.1-14-19. Eligibility of former residents to vote.**

Each citizen of the United States who was a qualified elector in this state immediately prior to establishing residence in another state and who has not qualified for voting purposes due to the residency requirement of that state may vote in North Dakota for president and vice president only, by applying for a separate ballot at least one day before the election in accordance with sections 16.1-14-20, 16.1-14-23, 16.1-14-24, 16.1-14-25, 16.1-14-26, and 16.1-14-27, provided the statements relative to new residents contained therein must, for this purpose, be changed by the county auditor and inspector of elections to comply with the provisions of this section.

*New  
16.1-13-34  
page 3  
sec 5*

**16.1-14-20. Application for presidential ballot by new residents.**

A person desiring to qualify to vote for presidential electors is not required to register but, not less than ten days in advance of the election, shall make an application 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)

*New*  
*16.1-13-37*  
*page 4*  
*Sec 4*

**16.1-14-21. Mailing duplicate application.**

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

*New*  
*16.1-13-38*  
*page 8*  
*Sec 7*

**16.1-14-22. Filing and indexing information from other states.**

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

*New*  
*16.1-13-39*  
*page 8*  
*Sec 8*

**16.1-14-23. Delivery of ballot to applicant.**

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

*New*  
*16.1-13-40*  
*page 9*  
*Sec 9*

**16.1-14-24. Voting by new residents.**

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

*New*  
*16.1-13-41*  
*page 10*  
*Sec 10*

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 removed. I have not voted and I will not vote otherwise than by this ballot.

Dated \_\_\_\_\_

Witness \_\_\_\_\_

County Auditor

\_\_\_\_\_  
(Signature of Voter)

The voter shall sign the certification upon the carrier envelope as set forth above and shall then 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 precinct in which the applicant resides.

**16.1-14-25. List of applicants open for public inspection.**

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

*New  
16.1-13-42  
Page 6  
Sec 11*

**16.1-14-26. Delivery and processing of presidential elector ballots.**

1. The county auditor shall deliver the 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 therewith.
2. The inspector of elections shall record the new resident voter's name with a notation designating the person as a new resident voting for presidential electors only.

*New  
16.1-13-43  
Page 6  
Sec 12*

**16.1-14-27. Application of other statutes.**

Except as provided in sections 16.1-14-18 through 16.1-14-27, the provisions of law relating to absent voters' ballots apply also to the casting and counting of ballots of new residents, the furnishing of election supplies, ballots, canvassing of ballots, and making proper returns of the results of the election.

*New  
16.1-13-44  
Sec 13  
Page 7*

**16.1-14-28. Definition of state.**

As used in sections 16.1-14-18 through 16.1-14-27, "state" includes the District of Columbia.

*Repealed*