58309.0300

Fifty-ninth
Legislative Assembly
of North Dakota

Introduced by

Senator Krebsbach

Representative Haas

FIRST ENGROSSMENT
with House Amendments

ENGROSSED SENATE BILL NO. 2336

1   A BILL for an Act to amend and reenact sections 16.1-07-01, 16.1-07-05, 16.1-07-06,

2   16.1-07-08, 16.1-07-08.1, and 16.1-07-12 of the North Dakota Century Code, relating to

3   absentee voting.

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

5   **SECTION 1. AMENDMENT.** Section 16.1-07-01 of the North Dakota Century Code is

6   amended and reenacted as follows:

7   **16.1-07-01. Absent voter - Who may vote.**

8   1.   Any qualified elector of this state, including an individual who is in the armed forces

9   of the United States, is in the merchant marine of the United States, or is a United

10   States citizen living outside the United States who resided in this state immediately

11   prior to the individual's departure from the United States, may vote an absent

12   voter's ballot at any general, special, or primary state election, any county election,

13   or any city or school district election.

14   2.   A ~~qualified elector who is a citizen of the United States and lives outside the United~~

15   ~~States or a~~ citizen of the United States who is eighteen years of age or older ~~and~~,

16   has never lived in the United States, and whose parent is a qualified elector of the

17   state may vote absentee in this state pursuant to this chapter if the individual:

18   a.   Does not maintain a domicile;

19   b.   Is not registered to vote <u>in any other state, territory, or possession of the</u>

20   <u>United States</u>;

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

22   and

23   d.   Possesses a valid passport or card of identity and registration issued under

24   the authority of the secretary of state of the United States.

1   Such an elector may vote only in federal elections, which means any election held

2   solely or in part for the purpose of electing or nominating any candidate for the

3   office of president, vice president, presidential elector, member of the United

4   States senate, or member of the United States house of representatives.

5   3.   An elector who votes by absentee ballot may not vote in person at the same

6   election.

7   **SECTION 2. AMENDMENT.** Section 16.1-07-05 of the North Dakota Century Code is

8   amended and reenacted as follows:

9   **16.1-07-05. Time for applying for ballot - Applications and voting for uniformed**

10   **citizens and for citizens living outside the United States - Emergency situations -**

11   **Sufficient time for application and ballot return.**

12   1.   At any time in an election year, any qualified elector may apply to the county

13   auditor, the auditor or clerk of the city, or the business manager of the school

14   district, as the case may be, by facsimile or otherwise, for an official ballot to be

15   voted at that election. A voter may obtain an application form for an absent voter's

16   ballot for a general, special, primary, or county election from either the county

17   auditor or a city auditor. The application form, for a member of the United States

18   armed forces or the United States merchant marine or for a qualified elector living

19   outside the United States, must include a space for the applicant to indicate

20   whether the application is for all statewide elections in the calendar year or only for

21   the election that is immediately after the date of the application.

22   2.   An applicant who is a qualified elector and on active duty as a member of the

23   United States armed forces or the United States merchant marine may receive an

24   absentee ballot by mail, facsimile, or electronic mail. In the event that returning the

25   voted ballot by mail is not practicable, qualified electors meeting the stated criteria

26   of this subsection may return a voted ballot and other required documents to the

27   county auditor by means of facsimile transmission or electronic mail. To return a

28   voted ballot and other required documents by electronic mail, the eligible voter

29   must have access to the technology to scan the documents, save the documents

30   in a secure format approved by the secretary of state, and return the documents as

31   an electronic mail attachment directly to the electronic mail address assigned by

1 the auditor, clerk, or business manager for that purpose prior to midnight in the

2 voter's county of residence on the day before the election. The secretary of state

3 shall develop written guidelines relating to security measures for voted ballots

4 returned by electronic mail.

5 3. Spouses, children, or other dependents of active duty members of the United

6 States armed forces or merchant marine who are qualified electors and stationed

7 as a family outside the United States are granted the same absentee voting rights

8 as the individual's spouse, parent, or guardian has under subsection 2.

9 4. An applicant who is a member of the United States armed forces or the United

10 States merchant marine living outside the United States or is a qualified elector

11 living outside the United States may apply for and vote by facsimile if otherwise

12 qualified to apply for and vote by absentee ballot. An auditor, clerk, or business

13 manager may send and receive facsimile absentee ballot applications and

14 facsimile absentee ballots to any individual eligible to apply for and vote by

15 facsimile under this section receive an absentee ballot by mail, facsimile, or

16 electronic mail. If returning the voted ballot by mail is not practicable, a qualified

17 elector may return a voted ballot and other required documents to the county

18 auditor by means of facsimile transmission or electronic mail. The elector must

19 have access to the technology to scan the documents, save the documents in a

20 secure format approved by the secretary of state, and return the documents as an

21 electronic mail attachment directly to the electronic mail address assigned by the

22 auditor, clerk, or business manager for that purpose before midnight in the voter's

23 county of residence on the day before the election. The secretary of state shall

24 develop written guidelines relating to security measures for voted ballots returned

25 by electronic mail.

26 5. No auditor or clerk may issue ballots for absentee voters on the day of the election

27 except to persons prevented from voting in person on the day of the election due

28 to an emergency. A person requesting an absentee ballot on the day of the

29 election due to an emergency must do so through an agent as set forth in this

30 chapter. An agent may represent only one person. The absentee ballot must be

31 returned to the county auditor's office by four p.m. on the day of the election.

1   6. A completed application must be submitted to the appropriate election official in a

2   timely manner so as to allow the applicant to receive, complete, and mail the

3   absent voter's ballot before the day of the election.

4   **SECTION 3. AMENDMENT.** Section 16.1-07-06 of the North Dakota Century Code is

5 amended and reenacted as follows:

6   **16.1-07-06. Application form.**

7   1. Application for an absent voter's ballot must be made on a form, prescribed by the

8   secretary of state, to be furnished by the proper officer of the county, city, or school

9   district in which the applicant is an elector, on any form, approved by the secretary

10   of state, or any blank containing the following information:

11   a. The applicant's name.

12   b. The applicant's current or most recent North Dakota residential address.

13   c. The applicant's mailing address.

14   d. The applicant's current home telephone number.

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

16   f. The date of the request.

17   g. An affirmation that the applicant has resided, or will reside, in the precinct for

18   at least thirty days next preceding the election.

19   h. The applicant's signature.

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

21   known.

22   If the applicant is unable to sign the applicant's name, the applicant shall mark (X)

23   on the application in the presence of a disinterested person. The disinterested

24   person shall print the name of the person marking the X below the X and shall sign

25   that the disinterested person's own name following the printed name together with

26   the notation "witness to the mark".

27   2. A The application for a qualified elector absent from the state is not required to file

28   an application for an absent voter's ballot for any statewide election if either of the

29   following apply serving on active duty as a member of the United States armed

30   forces, merchant marine, or a family member who is a qualified elector and

31   stationed outside the United States together with the individual's spouse, parent, or

1   guardian must include the following additional information if the voter desires to

2   vote by facsimile or electronic mail:

3   a.   ~~The elector is a member, or spouse or dependent of a member, of the United~~

4   ~~States armed forces or merchant marine living outside the United States.~~

5   Facsimile telephone number; or

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

7   Electronic mail address.

8   ~~If the qualified elector furnishes the county auditor with a current mailing address~~

9   ~~and the elector's residential address, the county auditor either shall mail to the~~

10   ~~qualified elector a ballot with a return envelope and instructions or send to the~~

11   ~~qualified elector the ballot and instructions by facsimile for voting for any statewide~~

12   ~~election in that calendar year.~~

13   3.   The application for a qualified elector living outside the United States must include

14   a facsimile telephone number or electronic mail address if the voter desires to vote

15   by facsimile or electronic mail.

16   **SECTION 4. AMENDMENT.** Section 16.1-07-08 of the North Dakota Century Code is

17   amended and reenacted as follows:

18   **16.1-07-08. Delivering ballots - Envelope accompanying - Statement on**

19   **envelope - Challenging electors voting by absentee ballot - Inability of elector to sign**

20   **name.**

21   1.   Upon receipt of an application for an official ballot properly filled out and duly

22   signed, or as soon thereafter as the official ballot for the precinct in which the

23   applicant resides has been prepared, the county auditor, city auditor, or business

24   manager of the school district, as the case may be, shall send to the absent voter

25   by mail, at the expense of the political subdivision conducting the election, one

26   official ballot, or personally deliver the ballot to the applicant or the applicant's

27   agent, which agent may not, at that time, be a candidate for any office to be voted

28   upon by the absent voter. The agent shall sign the agent's name before receiving

29   the ballot and deposit with the auditor or business manager of the school district,

30   as the case may be, authorization in writing from the applicant to receive the ballot

31   or according to requirements set forth for signature by mark. The auditor or

1   business manager of the school district, as the case may be, may not provide an

2   absent voter's ballot to a person acting as an agent who cannot provide a signed,

3   written authorization from an applicant. No person may receive compensation,

4   including money, goods, or services, for acting as an agent for an elector, nor may

5   a person act as an agent for more than four electors in any one election. A voter

6   voting by absentee ballot may not require the political subdivision providing the

7   ballot to bear the expense of the return postage for an absentee ballot.

8   2.   If there is more than one ballot to be voted by an elector of the precinct, one of

9   each kind must be included and an envelope must be enclosed with the ballot or

10   ballots. The front of the envelope must bear the official title and post-office

11   address of the officer supplying the voter with the ballot and upon the other side a

12   printed ~~statement~~ voter's affidavit in substantially the following form:

13   Precinct _____

14   Name _____

15   Residential Address _____

16   City _____ ND Zip Code _____

17   Under penalty of possible criminal prosecution for making a false

18   statement, I swear that I reside at the residential address provided

19   above, that I have resided in my precinct for at least thirty days

20   next preceding the election, and this is the only ballot I will cast

21   in this election.

22   Applicant's Signature _____

23   Date _____

24   If the absent voter is unable to sign the voter's name, the voter shall mark (X) on

25   the statement in the presence of a disinterested person. The disinterested person

26   shall print the name of the person marking the X below the X and shall sign ~~that~~

27   the disinterested person's own name following the printed name together with the

28   notation "witness to the mark".

29   3.   ~~The county auditor, city auditor, or business manager of the school district, as the~~

30   ~~case may be, may challenge the right of anyone to vote an absent voter's ballot~~

31   ~~whom that officer knows or has reason to believe is not a qualified elector. When~~

1   ~~challenging a voter who has applied for an absentee voter's ballot, the election~~

2   ~~official shall follow the procedures and use the affidavit provided for in section~~

3   ~~16.1-05-06 and include a voter's affidavit with the outgoing absentee voter's ballot~~

4   ~~along with an explanation that the voter's right to vote is being challenged and that~~

5   ~~the voter's affidavit must be completed and returned with the voter's absentee~~

6   ~~voter's ballot to be accepted.~~

7   ~~4.~~   Each person requesting an absent voter's ballot under this chapter must be

8   provided a set of instructions, prescribed by the secretary of state, sufficient to

9   describe the process of voting by absent voter's ballot. The voting instructions

10   must contain a statement informing the individual that the individual is entitled to

11   complete the absent voter's ballot in secrecy.

12   ~~5.~~ 4. Each individual requesting an absent voter's ballot under this chapter who cannot

13   read the English language or who because of blindness or other disability is unable

14   to mark the voter's ballot, upon request, may receive the assistance of any person

15   of the voter's choice, other than the voter's employer, an officer or agent of the

16   voter's union, a candidate running in that election, or a relative of a candidate as

17   described in subsection 2 of section 16.1-05-02, in marking the voter's ballot.

18   **SECTION 5. AMENDMENT.** Section 16.1-07-08.1 of the North Dakota Century Code

19   is amended and reenacted as follows:

20   **16.1-07-08.1. Procedures for voting with special write-in <u>or federal write-in</u>**

21   **absentee ballot.**

22   1.   Notwithstanding any other provision of this chapter, a qualified absentee elector

23   may apply to the county auditor for a special write-in absentee ballot. This ballot

24   may be used to vote for presidential electors and members of the United States

25   senate and of the United States house of representatives.

26   2.   The application for a special write-in absentee ballot may be made on a form

27   prescribed by the secretary of state. In order to qualify for a special write-in

28   absentee ballot, the voter shall state on the application that the voter is unable to

29   vote by regular absentee ballot or in person due to requirements of military service

30   or due to living in isolated or extremely remote areas of the world.

1   3.   Upon receipt of the application, the county auditor shall issue the special write-in

2   absentee ballot, which must be in the form prescribed by the secretary of state.

3   The ballot must permit the elector to vote by writing in a party preference for each

4   office, the names of specific candidates for each office, or the name of the person

5   whom the voter prefers for each office.

6   4.   If the voter is temporarily residing outside the United States or is a member of the

7   United States armed forces, merchant marine, or a family member and a qualified

8   elector, the voter may use the federal write-in absentee ballot in general, special,

9   and primary elections for local, state, or federal offices.

10   5.   If the voter is residing outside the United States, or is a member of the United

11   States armed forces, merchant marine, or a family member, and a qualified elector

12   stationed outside the United States, the voter may use the federal write-in

13   absentee ballot transmission envelope as an absentee ballot application

14   simultaneously with the submission of the federal write-in absentee ballot if the

15   voter is otherwise eligible to vote absentee in the jurisdiction where the request is

16   submitted.

17   **SECTION 6. AMENDMENT.** Section 16.1-07-12 of the North Dakota Century Code is

18   amended and reenacted as follows:

19   **16.1-07-12. Opening ballot - Voting or rejecting - Depositing in ballot box -**

20   **Preserving.** At any time between the opening and closing of the polls on election day, the

21   election judges of the relevant precinct first shall open the outer envelope and compare the

22   signature on such application for an absent voter's ballot with the signature on the statement

23   provided for in section 16.1-07-08. If the judges find that the statement is sufficient and that the

24   signatures correspond, and that the applicant is then a duly qualified elector of such precinct

25   and has not voted at the election, they shall open the absent voter's envelope in such manner

26   as not to destroy the statement thereon. They shall take out the ballot or ballots contained

27   therein without unfolding the same, or permitting the same to be opened or examined, and after

28   ~~stamping and initialing or~~ initialing the same as other ballots are ~~stamped and initialed or~~

29   initialed, they shall deposit the ballot in the proper ballot box and show in the pollbook of the

30   election that the elector has voted. If the statement is found to be insufficient, or that the

31   signatures do not correspond, or that the applicant is not then a duly qualified elector of the

1 precinct, the vote may not be allowed, but without opening the absent voter's envelope, the

2 election inspector or election judge shall mark across the face thereof "rejected as defective" or

3 "rejected as not an elector", as the case may be. These rejected ballots are then turned over to

4 the county canvassing board for final determination of eligibility. The subsequent death of an

5 absentee voter after having voted by absentee ballot does not constitute grounds for rejecting

6 such ballot.