

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2319
(Senators Dever, Nelson, Oehlke)
(Representatives Boehning, L. Meier, Wolf)

AN ACT to amend and reenact sections 16.1-07-04, 16.1-07-06, 16.1-07-08, 16.1-07-12, 16.1-07-12.1, 16.1-07-15, 16.1-11.1-02, 16.1-11.1-05, 16.1-12-02, 16.1-12-02.1, 16.1-12-02.2, and 16.1-12-02.3 of the North Dakota Century Code, relating to absentee voting, mail ballot voting, certificates of nomination by petition for president, write-in votes, and certificates of nomination by petition for independent candidates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-07-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-04. When ballots furnished proper officials. The county auditor, or any other officer required by law to prepare any general, special, or primary state election ballots or any county election ballots, shall prepare, have printed, and deliver to the county auditor at least forty days before the holding of any general, special, or primary state election a sufficient number of absent voter ballots for the use of all voters likely to require such ballots for that election. In city or school elections, the auditor or clerk of the city, the business manager of the school district, or any other officer required by law to prepare city or school election ballots shall prepare and have printed and available for distribution to the public at least forty days before the holding of any city or school election a sufficient number of absent voter's ballots for the use of all voters likely to require such ballots for that election. Officers authorized to distribute absent voter's ballots under this chapter shall ensure all ballots used as absent voter's ballots are secure at all times and accessible only to those persons under the officer's supervision for distribution. If an election official personally distributes and collects an absent voter's ballot outside the election official's office, appointed election judges from an election board shall accompany the election official along with the ballot to and from the voter's location and be present while the voter is marking the ballot.

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

16.1-07-06. Application form.

1. Application for an absent voter's ballot must be made on a form, prescribed by the secretary of state, to be furnished by the proper officer of the county, city, or school district in which the applicant is an elector, on any form, approved by the secretary of state, or any blank containing the following information:
 - a. The applicant's name.
 - b. The applicant's current or most recent North Dakota residential address.
 - c. The applicant's mailing address.
 - d. The applicant's current contact telephone number.
 - e. The election for which the ballot is being requested.
 - f. The date of the request.

- g. An affirmation that the applicant has resided, or will reside, in the precinct for at least thirty days next preceding the election.
- h. The applicant's signature.
- i. A space for the voter to ~~include the voter's precinct or voting location, if known~~ indicate the voter's status as a citizen living outside the United States, a uniformed servicemember living away from the voter's North Dakota residence, or a family member of the uniformed servicemember living away from the voter's North Dakota residence.
- j. The applicant's birth date and year.
- k. The applicant's motor vehicle operator's license or nondriver identification number, if available.

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

- 2. The application for a qualified elector serving on active duty as a uniformed service member or a family member who is a qualified elector and stationed at a location other than that individual's voting residential address must include the following additional information if the voter desires to vote by facsimile or electronic mail:
 - a. Facsimile telephone number; or
 - b. Electronic mail address.
- 3. The application for a qualified elector living outside the United States must include a facsimile telephone number or electronic mail address if the voter desires to vote by facsimile or electronic mail.

SECTION 3. AMENDMENT. Section 16.1-07-08 of the North Dakota Century Code is amended and reenacted as follows:

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

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

the political subdivision providing the ballot to bear the expense of the return postage for an absentee ballot.

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

Precinct _____
Name _____
Residential Address _____
City _____ ND Zip Code _____

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

Applicant's Signature _____
Date _____

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

3. Each ~~person~~ individual requesting an absent voter's ballot under this chapter must be provided a set of instructions, prescribed by the secretary of state, sufficient to describe the process of voting by absent voter's ballot. The voting instructions must contain a statement informing the individual that the individual is entitled to complete the absent voter's ballot in secrecy.
4. Each individual requesting an absent voter's ballot under this chapter who cannot read the English language or who because of blindness or other disability is unable to mark the voter's ballot, upon request, may receive the assistance of any ~~person~~ individual of the voter's choice, other than the voter's employer, an officer or agent of the voter's union, a candidate running in that election, or a relative of a candidate as described in subsection 2 of section 16.1-05-02, in marking the voter's ballot.

SECTION 4. AMENDMENT. Section 16.1-07-12 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-12. Opening ballot - Voting or rejecting - Depositing in ballot box - Preserving. At any time ~~between the opening~~ beginning on the day before election day and the closing of the polls on election day, the election ~~judges~~ clerks and board members of the relevant precinct first shall open the outer envelope and compare the signature on ~~such the~~ the application for an absent voter's ballot with the signature on the statement provided for in section 16.1-07-08. If the judges find that the statement is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of ~~such the~~ the precinct and has not voted at the election, they shall open the absent voter's envelope in ~~such~~ a manner as not to destroy the statement thereon. They shall take out the ballot or ballots contained therein without unfolding the same, or permitting the same to be opened or examined, and after initialing the same as other ballots are initialed, they shall deposit the ballot in the proper ballot box and show in the pollbook of the election that the elector has voted. The votes from these cast ballots may

not be tallied and the tabulation reports may not be generated until the polls have closed on election day. If the statement is found to be insufficient, or that the signatures do not correspond, or that the applicant is not then a duly qualified elector of the precinct, the vote may not be allowed, but without opening the absent voter's envelope, the election inspector or election judge shall mark across the face thereof "rejected as defective" or "rejected as not an elector", as the case may be. These rejected ballots are then turned over to the county canvassing board for final determination of eligibility. The subsequent death of an absentee voter after having voted by absentee ballot does not constitute grounds for rejecting such the ballot.

SECTION 5. AMENDMENT. Section 16.1-07-12.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-12.1. Absentee ballot precinct - Election board appointment - Ballot counting.

1. For any primary, general, or special statewide, district, or county election, the board of county commissioners may create a special precinct, known as an absentee ballot precinct, for the purpose of counting all absentee ballots cast in an election in that county. The election board of the absentee ballot precinct must be known as the absentee ballot counting board. The county auditor shall supply the board with all necessary election supplies as provided in chapter 16.1-06.
2. If the board of county commissioners chooses to establish an absentee ballot precinct according to this section, the following provisions apply:
 - a. The county auditor shall appoint the absentee ballot counting board that consists of one independent representative to act as the inspector and an equal number of representatives from each political party represented on an election board in the county, as set forth in section 16.1-05-01, to act as judges. Each official of the board shall take the oath required by section 16.1-05-02 and must be compensated as provided in section 16.1-05-05.
 - b. The county auditor shall have the absentee ballots delivered to the inspector of the absentee ballot counting board with the election supplies, or if received later, then prior to the closing of the polls.
 - c. ~~On the day of the election, the~~ The absentee ballot counting board shall occupy a location designated by the county auditor which must be open to any ~~person~~ individual for the purpose of observing the counting process.
 - d. The absentee ballots must be opened and handled as required in section 16.1-07-12. The absentee ballot counting board may commence counting the absentee ballots at the same time as any precinct within the county, city, or legislative district opens its polls. As soon as all the polls in the county, city, or legislative district close and the count is completed, the inspector shall announce publicly the results. The board shall comply with the requirements of sections 16.1-15-04 through 16.1-15-12, as applicable.

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

16.1-07-15. Early voting precinct - Election board appointment - Closing and canvassing.

1. For any primary, general, or special statewide, district, or county election, the board of county commissioners may, before the sixtieth day before the day of the election, create a special precinct, known as an early voting precinct, to facilitate the conduct of early voting in that county according to chapters 16.1-13 and 16.1-15. At the determination of the county auditor, more than one voting location may be utilized for the purposes of operating the early voting precinct. The election board of the early voting precinct must be known as

the early voting precinct election board. The county auditor shall supply the board with all necessary election supplies as provided in chapter 16.1-06.

2. If the board of county commissioners establishes an early voting precinct according to this section, the following provisions apply:
 - a. Early voting must be authorized during the fifteen days immediately before the day of the election. The county auditor shall designate the business days and times during which the early voting election precinct will be open and publish notice of the early voting center locations, dates, and times in the official county newspaper once each week for three consecutive weeks immediately before the day of the election.
 - b. The county auditor shall appoint the early voting precinct election board for each voting location that consists of one independent representative to act as the inspector and an equal number of representatives from each political party represented on an election board in the county, as set out in section 16.1-05-01, to act as judges. Each official of the board shall take the oath required by section 16.1-05-02 and must be compensated as provided in section 16.1-05-05.
 - c. The county auditor, with the consent of the board of county commissioners, shall designate ~~a space~~ each early voting location in a public facility, accessible to the elderly and the physically disabled as provided in section 16.1-04-02, ~~to locate the early voting precinct.~~
 - d. At the close of each day of early voting, the inspector, along with a judge from each political party represented on the board, shall secure all election-related materials, including:
 - (1) The pollbooks and access to any electronically maintained pollbooks.
 - (2) The ballot boxes containing voted ballots.
 - (3) Any void, spoiled, and unvoted ballots.
 - e. Ballot boxes containing ballots cast at an early voting ~~precinct~~ location may not be opened until the day of the election except as may be necessary to clear a ballot jam or to move voted ballots to a separate locked ballot box in order to make room for additional ballots.
 - f. ~~The~~ Each early voting ~~precinct~~ location may be closed, as provided in chapter 16.1-15, at the end of the last ~~business~~ day designated for early voting in the county. Results from the early voting precinct may be counted, canvassed, or released under chapter 16.1-15 as soon as any precinct within the county, city, or legislative district closes its polls on the day of the election. The county auditor shall designate a location for the closing, counting, and canvassing process under chapter 16.1-15, which location must be open to any person for the purpose of observing.
 - g. The early voting precinct election board shall comply with the requirements of chapters 16.1-05, 16.1-13, and 16.1-15, as applicable.

SECTION 7. AMENDMENT. Section 16.1-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11.1-02. Application for mail ballots. The county auditor shall mail an application form for a mail ballot to each ~~person~~ individual listed in the central voter file for the county on one date no sooner than the ~~forty-fifth~~ fiftieth day before the election and no later than the ~~thirtieth~~ fortieth day before the election. The county auditor, for two consecutive weeks after the date on which the mail ballot applications are mailed, shall publish in the official newspaper of the county an application form for a mail ballot and a notice that additional mail ballot applications may be obtained from the election

official. The application form for a mail ballot must be in substantially the ~~following~~ form: provided in section 16.1-07-06.

I, _____, am or will be a qualified elector and to my best
(please print name)

~~knowledge and belief am or will be entitled to vote at the election. I apply for an official mail ballot to be voted by me at that election. I understand that it is a criminal offense to knowingly vote when not qualified to do so.~~

~~I have or will have resided at the below address for at least thirty days before the election.~~
My telephone number is _____.

Dated _____, _____.

(Signature of Applicant)

(Mailing Address)

_____, North Dakota
(City) (Zip Code)

SECTION 8. AMENDMENT. Section 16.1-11.1-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11.1-05. Replacement ballots. An elector may obtain a replacement ballot if a mail ballot is destroyed, spoiled, lost, or not received by the elector. The elector seeking a replacement ballot shall ~~sign a sworn statement that the ballot was destroyed, spoiled, lost, or not received and shall present the statement to make the elector's request of the county auditor or appropriate election officer no later than four p.m. on the day before the election.~~

SECTION 9. AMENDMENT. Section 16.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-12-02. Certificates of nomination by petition - Form and contents. Certificates of nomination for nominees for an office to be filled at a general or special election, except for an office appearing on the no-party ballot, may be made as provided by this section. Except for nominees for president of the United States, names of nominees so nominated must appear on the ballot as independent nominations. The names of nominees for president of the United States may appear on the ballot with a designation, not to exceed five words, that names the organization or political party to which the presidential candidate affiliates. The designation may not falsely indicate an affiliation with or the support of any political party organized in accordance with this title or include any substantive word or phrase that is profane or that is already included in or resembles the name of a political party entitled to a separate column under section 16.1-11-30. ~~Each~~ Except for candidates for the office of president of the United States, each certificate of nomination by petition must meet the specifications for nominating petitions set forth in section 16.1-11-16. A candidate for the office of the president of the United States may begin gathering the signatures for the certificate of nomination on the first day of January of a presidential election year and shall submit the petition to the secretary of state before four p.m. on the sixtieth day before the general election. The signatures on the petition must be in the following number:

1. Except as provided in subsection 3, if the nomination is for an office to be filled by the qualified electors of the entire state, there must be no fewer than one thousand signatures.
2. If the nomination is for an office to be filled by the qualified electors of a district less than the entire state, the number of signatures must be at least two percent of the resident population of the district as determined by the most recent federal decennial census, but in no case may more than three hundred signatures be required.

3. If the nomination is for the office of president, there must be no fewer than four thousand signatures.
4. If the petition is for the office of governor or lieutenant governor, it must contain the names and other required information of candidates for both those offices.

SECTION 10. AMENDMENT. Section 16.1-12-02.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-12-02.1. Applicant's name placed upon ballot - Affidavit to accompany petition.

Upon receipt by the secretary of state of the certificate of nomination provided for in section 16.1-12-02 accompanied by the following affidavit, the secretary of state shall place the applicant's name upon the general election ballot. The affidavit must be substantially as follows:

State of North Dakota)
) ss.
County of _____)

I, _____, being sworn, say that I reside at _____, in the city of _____, state of North Dakota; that I am a candidate for nomination to the office of _____ to be chosen at the general election to be held on _____, _____, and I request that my name be printed upon the general election ballot as ~~provided by law~~ I have identified my ballot name below. I understand that nicknames are allowed as part of my ballot name, but titles and campaign slogans are not permissible. I have reviewed the requirements to hold office and I certify that I am qualified to serve if elected.

Ballot name requested

Date _____

Candidate's signature

Subscribed and sworn to before me on _____, _____.

Notary Public
My Commission Expires _____

NOTARY SEAL

SECTION 11. AMENDMENT. Section 16.1-12-02.2 of the North Dakota Century Code is amended and reenacted as follows:

16.1-12-02.2. Counting of write-in votes - Certificate of candidacy by write-in candidates.

1. An election board or canvassing board may not count or be required to officially report any write-in vote for any:
 - a. ~~Person~~ Individual who is required to file a certificate of write-in candidacy under this section but who has not filed a certificate of candidacy and been certified as a write-in candidate.
 - b. Fictitious person, ~~nonperson~~, or ~~person~~ individual clearly not eligible to qualify for the office for which the vote was cast.
 - c. Statement concerning the candidates.

- d. Name written or printed by the voter for an office that did not also include the darkening of the oval next to the write-in line, except that a write-in candidate for a nonfederal office may make a timely written demand to a county canvassing board to identify and preserve any write-in vote cast for the office sought by the write-in candidate for canvass by the board. The candidate shall deliver the demand to the county auditor and a copy to the county recorder no later than thirty-six hours before the time the county canvassing board is scheduled to meet. A demand only may be made if the unofficial election results maintained by the county auditor demonstrate that the write-in candidate's known vote total is within the pertinent percentage limits provided in subsection 1 or 2 of section 16.1-16-01 and a statement to that effect is included in the demand. After delivery of the ballots as provided by section 16.1-15-08, the canvassing board shall review the ballots to identify any ballot that contains a write-in vote. The county canvassing board shall tally and canvass any write-in vote in the same manner as lawful or qualifying write-in votes if the canvassing board is able to clearly ascertain the intent of the voter from examining the ballot because the write-in candidate's name has been written on the ballot opposite the office to be voted for or because of any other cogent evidence of intent.
 - e. Write-in votes which constitute five percent or less of the votes cast by the voters for the candidate receiving the most votes for that office, except in the case of a primary election where enough votes were cast as write-in votes to qualify a name for the general election ballot. This percentage is to be calculated based on the total number of write-in votes tabulated by the voting equipment in the precincts of the county in which that office was on the ballot.
 - f. Write-in votes that do not need to be individually canvassed based on the requirements of this subsection must be listed on the county official canvass report as "scattered write-ins".
- 2. ~~A person~~ An individual who intends to be a write-in candidate for president of the United States ~~at the presidential preference contest~~ or for statewide or judicial district office at any election shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the ~~contest~~ or election. The certificate must contain the name and address of the candidate and be signed by the candidate. Before the thirteenth day before the ~~contest~~ or election, the secretary of state shall certify the names of the candidates to each county auditor as write-in candidates.
 - 3. ~~A person~~ An individual who intends to be a write-in candidate at the general election for president of the United States shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the general election. The certificate must contain the names and addresses of the candidates for presidential electors for that presidential candidate and a certification of acceptance signed by each candidate for elector. The candidate shall sign the certificate. The certificate may also include the name and address of a candidate for vice president of the United States and a certification of acceptance signed by that candidate. The secretary of state shall prescribe the form of the certificate of write-in candidacy and the certification of acceptance. Before the thirteenth day before the election, the secretary of state shall certify the names of the presidential candidates and the presidential electors to each county auditor as write-in candidates.
 - 4. ~~A person~~ An individual who intends to be a write-in candidate for any legislative district office shall file a certificate of write-in candidacy with the election officer with whom the candidate would otherwise file to have the candidate's name placed on the ballot. The certificate must contain the name, address, and signature of the candidate. Certificates must be filed by four p.m. on the fourth day before the election. When the candidate files a certificate, the candidate also shall file the contribution statement provided for under section 16.1-08.1-02 complete through the day of the filing of the certificate.

5. A certificate under this section is not required when:
 - a. No names will appear on the ballot for an office;
 - b. The number of candidates appearing on the ballot for an office is less than the number to be elected; or
 - c. The number of candidates appearing on the ballot for a party office is less than the number of nominations a party is entitled to make. ~~When certificates of write-in candidacy are not required under this chapter, all write-in votes must be counted.~~

~~A person~~

6. An individual required to file a certificate of write-in candidacy may not seek more than one office appearing on the primary and general election ballots.

SECTION 12. AMENDMENT. Section 16.1-12-02.3 of the North Dakota Century Code is amended and reenacted as follows:

16.1-12-02.3. Nominating petition for an independent candidate not to be circulated more than ~~ninety one hundred fifty days prior to~~ before filing time. A petition provided for in this chapter may not be circulated or signed more than ~~ninety one hundred fifty~~ days before the date when any petition must be filed under the provisions of this chapter. Any signatures to a petition obtained more than ~~ninety one hundred fifty~~ days before that date may not be counted.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2319.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 62 Nays 30 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State