

Introduced by

Senators Oban, Dever, Unruh

Representatives Beadle, Boschee, Martinson

1 A BILL for an Act to amend and reenact sections 16.1-07-09, 16.1-07-10, 16.1-07-12, and  
2 16.1-11.1-07, and subsection 7 of section 16.1-16-01 of the North Dakota Century Code,  
3 relating to signature discrepancies on absent and mail voters' applications and ballots.

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

5 **SECTION 1. AMENDMENT.** Section 16.1-07-09 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **16.1-07-09. Canvassing of mailed absent voter's ballots received late.**

8 In the case of congressional, state, county, city, or school district elections, if an envelope  
9 postmarked or otherwise officially marked by the United States postal service or other mail  
10 delivery system before the date of election and containing an absent voter's ballot is received by  
11 the officer too late to be forwarded to a polling place of the proper voting precinct in time to be  
12 tabulated, the ballot must be tallied by the canvassing board of the county, the governing body  
13 of the city, or the school board of the school district, as the case may be, at the time the returns  
14 are canvassed. Any envelope without a postmark or other official marking by the United States  
15 postal service or other mail delivery system or with an illegible postmark or other official marking  
16 and containing an absentee voter's ballot must be received by mail by the proper officer prior to  
17 the meeting of the canvassing board. An absent voter may personally deliver the absent voter's  
18 ballot to the appropriate officer's office at any time before five p.m. on the day before the  
19 election. Any envelope containing an absent voter's ballot with a postmark or official date stamp  
20 on the day of election or thereafter may not be tallied with the ballots timely submitted for the  
21 election. Before forwarding any ballot to a canvassing board pursuant to this section, the officer  
22 forwarding the ballot shall print the date of receipt on the envelope. Upon receipt, the  
23 canvassing board shall determine ~~that the elector was qualified to vote in that precinct, that the~~  
24 ~~elector~~ and did not previously vote in that precinct on the date of the election, ~~and that the~~

1 signatures on the absentee ballot application and the voter's affidavit were signed by the same-  
2 person before allowing the ballot to be tallied.

3 **SECTION 2. AMENDMENT.** Section 16.1-07-10 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **16.1-07-10. Care and custody of ballot - Verifying signatures - Submitted ballot may**  
6 **not be returned.**

- 7 1. Upon receipt of an envelope containing the absent voter's ballot, the proper officer or  
8 an individual designated by the officer immediately shall attach the application of the  
9 absent voter and compare the signature on the application with the signature on the  
10 back of the envelope to determine whether the signatures were made by the same  
11 individual. The signatures do not need to match exactly for a determination the  
12 signatures were made by the same individual. If, after a good faith examination, the  
13 officer or designee determines the signatures were not made by the same individual,  
14 the officer or designee shall set the envelope and application aside and notify the voter  
15 who submitted the application of the discrepancy. If there is less than one week before  
16 the election for which the ballot was submitted and the voter provided a telephone  
17 number on the voter's application, the officer or designee shall notify the voter by  
18 telephone. Otherwise, the officer or designee shall notify the voter by mail. The  
19 notification must inform the voter the ballot will not be tallied unless:
- 20 a. The discrepancy is resolved to the satisfaction of the officer or designee; or  
21 b. The determination by the officer or designee is appealed to the canvassing board  
22 as permitted under subsection 2, and the canvassing board determines the  
23 signatures were made by the same individual.
- 24 2. A voter who is notified under subsection 1 may appeal the officer's determination to  
25 the canvassing board for the relevant precinct at any time before the canvassing board  
26 certifies the election results. The determination by the canvassing board is final. If the  
27 canvassing board determines the signature on the application and the signature on the  
28 envelope were made by the same individual, the ballot in the envelope must be tallied.  
29 If the canvassing board does not determine the signatures were made by the same  
30 individual, the ballot in the envelope may not be tallied.

1       3. If the officer determines the signatures on the application and envelope were made by  
2       the same individual, the officer shall file the ballot with other absentee ballots from the  
3       same precinct. If the officer determines the signatures were not made by the same  
4       individual and the voter does not appeal the officer's determination, the officer shall set  
5       the envelope and attached application aside. All envelopes and applications set aside  
6       under this subsection must be bundled together, packaged and labeled in a way to  
7       identify the documents as having mismatched signatures as determined under this  
8       section and to instruct the canvassing board not to open the envelopes, and delivered  
9       to the relevant canvassing board.

10       4. After submission to the appropriate election officer, a marked absent voter's ballot may  
11       not be returned to the voter for any reason other than to complete any missing  
12       information required on the affidavit on the back of the return envelope.

13       5. Before delivering the absentee ballots to a polling place of the proper precinct, the  
14       proper officer shall package the ballots in a manner so the ballots are sealed securely.  
15       The package must be endorsed with the name of the proper voting precinct, the name  
16       and official title of the officer, and the words "This package contains an absent voter's  
17       ballot and must be opened only according to the processing provisions of section  
18       16.1-07-12." The officer shall keep the package safely in the officer's office until it is  
19       delivered by the officer as provided in this chapter.

20       **SECTION 3. AMENDMENT.** Section 16.1-07-12 of the North Dakota Century Code is  
21       amended and reenacted as follows:

22       **16.1-07-12. Opening ballot - Voting or rejecting - Depositing in ballot box - Preserving.**

23       1. At any time beginning on the day before election day and the closing of the polls on  
24       election day, the election clerks and board members of the relevant polling place first  
25       shall compare the signature on the application for an absent voter's ballot with the  
26       signature on the voter's affidavit provided for in section 16.1-07-08 to ensure the  
27       signatures correspond shall determine whether a voter identified on the envelope  
28       containing an absentee voter's ballot is a duly qualified elector of the precinct and has  
29       not voted at the election. If the applicant is then a duly qualified elector of the precinct  
30       and has not voted at the election, they the election clerks and board members shall  
31       open the absent voter's envelope in a manner as not to that does not destroy the

1 affidavit thereon. ~~They~~The election clerks and board members shall take out the  
2 secrecy envelope ~~with~~containing the ballot ~~or ballots contained therein~~ without  
3 unfolding the ~~same~~secrecy envelope, or permitting the ~~same~~secrecy envelope to be  
4 opened or examined, and indicate in the pollbook of the election that the elector has  
5 voted. The election board members ~~not participating in the comparing of signatures~~  
6 ~~and~~who do not participate in entering voters into the pollbook shall remove the ballot  
7 ~~or ballots~~ from the secrecy envelope, unfold and initial the ~~same~~ballot, and deposit the  
8 ballot in the proper ballot box for tabulation. The votes from these cast ballots may not  
9 be tallied and the tabulation reports may not be generated until the polls have closed  
10 on election day.

11 2. If the affidavit on the outer envelope of a returned absentee ballot is found to be  
12 insufficient, ~~or that the signatures on the application and affidavit do not correspond, or~~  
13 ~~that the applicant is not then a duly qualified elector of the precinct, the vote may not~~  
14 ~~be allowed, but~~and, without opening the absent voter's envelope, the election  
15 inspector or election judge shall mark across the face thereof "rejected as defective" or  
16 "rejected as not an elector", as the case may be. These rejected ballots ~~are then~~  
17 ~~turned over~~must be delivered to the county canvassing board for final determination of  
18 eligibility. The subsequent death of an absentee voter after having voted by absentee  
19 ballot does not constitute grounds for rejecting the ballot.

20 **SECTION 4. AMENDMENT.** Section 16.1-11.1-07 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **16.1-11.1-07. Counting of mail ballots.**

23 A mail ballot may be counted only if:

- 24 1. The ballot is returned in the return identification envelope with a postmark or official  
25 date stamp of at least the day before the election and received prior to the meeting of  
26 the canvassing board;
- 27 2. The envelope is signed by the elector to whom the ballot is issued; and
- 28 3. ~~The signature has been verified by the election board with the signatures~~signatures on  
29 the envelope and the elector's mail ballot application form were made by the same  
30 individual, as determined under section 16.1-07-10.

1       **SECTION 5. AMENDMENT.** Subsection 7 of section 16.1-16-01 of the North Dakota  
2 Century Code is amended and reenacted as follows:

3       7. At the conclusion of the recount, the county auditor or other election official shall  
4 submit all challenged ballots to the recount board for decision. Except for political  
5 subdivision recounts other than counties, the recount board must be composed of the  
6 state's attorney of the county, the chairman of the board of county commissioners, and  
7 the county recorder. Unless otherwise specified by law, for a political subdivision other  
8 than a county, the governing body of the political subdivision shall appoint the recount  
9 board. An individual may not serve on the recount board if the individual has anything  
10 of value bet or wagered on the result of the election, is a candidate for the office being  
11 recounted, or is the husband, wife, father, mother, father-in-law, mother-in-law, son,  
12 daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage,  
13 of the whole or the half-blood, of any candidate involved in the recount. If any of the  
14 members of the recount board are disqualified or cannot serve for any other reason,  
15 the members of the board of county commissioners or other political subdivision  
16 governing body who would be qualified to serve on the board shall appoint  
17 disinterested qualified electors of the county or other political subdivision to serve as  
18 alternates. ~~The~~Except for ballots set aside for signature discrepancies and  
19 subsequently resolved or appealed under section 16.1-07-10, the recount board shall  
20 review all challenged ballots and on majority vote shall decide how those ballots are  
21 counted. The recount board is authorized to initial all absentee ballots cast under  
22 section 16.1-07-09 that were not considered or counted at the various precincts in the  
23 county for the reasons provided in sections 16.1-07-11 and 16.1-07-12 or by the  
24 county canvassing boards as provided in section 16.1-15-19. The decision of the  
25 recount board is final, subject to the right to contest the election as provided in this  
26 chapter. If during the recount a recess is called, the county auditor or other political  
27 subdivision election official shall take appropriate steps to safeguard the ballots.