

2021 HOUSE JUDICIARY

HB 1078

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1078

1/19/2021

Relating to the filling of a vacancy of a presidential elector and voting of new and former residents at presidential elections.

Vice Chairman Karls called the hearing to order at 10:30 AM.

Representatives	Attendance
Representative Lawrence R. Klemin	P
Representative Karen Karls	P
Representative Rick Becker	P
Representative Ruth Buffalo	P
Representative Cole Christensen	P
Representative Claire Cory	P
Representative Karla Rose Hanson	P
Representative Terry B. Jones	P
Representative Jeffery J. Magrum	P
Representative Bob Paulson	P
Representative Gary Paur	P
Representative Shannon Roers Jones	P
Representative Bernie Satrom	P
Representative Steve Vetter	P

Discussion Topics:

- Electors inconsistency in voting
- Sanctity of the electoral process
- Orderly operation of electoral college
- Definition of Faithful Electors
- Elector vacancy
- Amendment

Rep. Klemin: Introduced the bill: Testimony #995, 996, 1485, 1486, 1487, 10:30

Al Jaeger, Secretary of State: Testimony #1219 10:47

Jim Silrum, Deputy Secretary of State: Further information. 11:00

Rep. Satrom Motion to adopt amendment # 21.0169.04001

Seconded by Rep. T. Jones

Voice vote carried

Rep. Karls move Do Pass as Amended

Rep. Vetter Seconded

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	A
Rep. Christensen	N
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	A
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	Y
Rep K. Hanson	Y

Motion carried. 11-1-2 Carrier: Chairman Klemin

Chairman Klemin closed the meeting at 11:19 AM.

DeLores D. Shimek, Committee Clerk by Anna Fiest

05
1/19/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1078

Page 11, line 25, remove "an"

Page 11, line 26, replace "amended certificate of ascertainment stating" with "documentation of the vacancy, the method by which the vacancy was filled, and"

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Page 13, line 31, replace "amended certificate of ascertainment" with "signed documentation"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1078: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1078 was placed on the Sixth order on the calendar.

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Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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Chicago, IL 60602
(312) 450-6600 tel
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www.uniformlaws.org

WHY YOUR STATE SHOULD ADOPT THE UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT

In 2010, the Uniform Law Commission (ULC) approved the **Uniform Faithful Presidential Electors Act (UFPEA)**, to address the rare but historically persistent problem of presidential electors who do not adhere to their obligation to vote faithfully for their parties' candidates. Many states have enacted provisions to deal with "faithless" electors or to ensure that those selected discharge their duty faithfully – however, the solutions vary, and conflicting results or discounted votes could cause confusion or an indecisive outcome in the Electoral College.

Moreover, the United States Supreme Court unanimously upheld in *Chiafalo v. Washington*, 591 U.S. ____ (2020), state laws that remove or punish rogue presidential electors who refuse to cast their votes for the presidential candidate they pledged to support. In *Colorado Department of State v. Baca*, 591 U.S. ____ (2020), decided the same day as *Chiafalo*, the U.S. Supreme Court reversed a Tenth Circuit opinion that had declared Colorado's adoption of the UFPEA to be an unconstitutional limit on elector discretion.

In other words, the Supreme Court has made clear that states have the authority to bind their electors to the candidates they have pledged to support. By enacting legislation like UFPEA, states assure citizens that their votes will not be overridden by a single elector and protects the country from the chaos that would ensue if a handful of electors could negate the will of the voters.

The UFPEA provides an effective remedy to prevent the potential harm from faithless elector voting. Some important reasons why your state should adopt the UFPEA include:

- **UFPEA provides the voters of the state with the confidence** that the votes they have cast will be honored when the Electoral College meets to decide the outcome of presidential elections.
- **UFPEA prevents parties and candidates from engaging in nefarious behavior** such as the courtship of faithless electors in close or particularly charged election in order to sway the outcome in favor of one candidate.
- **UFPEA creates a relatively simple process** by which electors commit to vote as the popular will and the parties they represent intend.
- **UFPEA prevents the potentially damaging consequences of rogue elector voting.**
- **UFPEA ensures the orderly operation of states' Electoral College voting** and protecting the will of the people as expressed by the underlying election.

For further information about UFPEA please contact Lindsay Beaver, Legislative Counsel at lbeaver@uniformlaws.org, or Katie Robinson, Legislative Program Director & Communications Officer at krobinson@uniformlaws.org.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.



UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT

Summary

Almost all presidential electors in this country's history have voted for their parties' candidates, but in a few incidents electors have not voted as directed by the party. Fortunately, that occasional "faithless" elector has not changed the outcome of a presidential election, but that is in good part because most Electoral College counts are not very close. In several elections where close Electoral College votes seemed possible (but did not come about), campaigns have made plans to court faithlessness, and some electors have contemplated voting faithlessly.

The **Uniform Faithful Presidential Electors Act** addresses the problem of elector who decides to vote inconsistently with the way they were elected to vote by the people of the state. The UFPEA creates a procedure that helps assure that all states attempting to appoint a complete complement of electors will succeed and maintains the sanctity of the electoral process.

The emergence of political parties, the designation by those parties of presidential and vice-presidential candidates, and the parties' nomination of presidential electors in each state who it was assumed would vote for the parties' presidential and vice-presidential candidates has created dissonance between what the Constitution envisaged and the realities of the electoral process. In many states the ballot contains no mention of a role for electors at all. Instead, the names of candidates for president and vice president appear on the ballots, accompanied by political party designation. Votes for these candidates are then turned by state law into votes for electors. Even where ballots do make some mention of electors, the names of presidential and vice-presidential candidates appear and are typically given greater prominence. To all appearances voters are thus casting ballots directly for presidential and vice-presidential candidates. That is surely the working assumption of the overwhelming preponderance of the voters in the country, even if some of them — perhaps even many — appreciate that the eventual winner is determined by the electoral vote count.

In the contemporary electoral context, faithless votes hold the potential for great mischief, producing a president or vice-president (or both) other than those for whom voters were led to believe they were casting their votes. In order to address electoral mischief, approximately thirty states have taken some action to discourage or forbid faithless electoral votes. Some employ pledges of faithfulness, administered in some cases by political parties and in other cases as part of the ballot qualification process. Others forbid faithlessness, some with civil, or even criminal penalties. And some provide that faithless voting constitutes resignation from the office of elector.

The variation in state laws opens up the possibility for disputes about whether a faithless vote is to be counted, and also whether a faithful vote might be substituted for it. Different conclusions might be reached under different state laws, and there might be further dispute about the consequences of one resolution or another for the number of appointed electors — the base across the country for determining the required majority. These various potential sources of discord and confusion argue strongly in favor of a uniform law adopted by every state that would forbid or nullify elector faithlessness and assure that each state submits an electoral vote count that reflects faithful voting.

The UFPEA proposes a state-administered pledge of faithfulness, with any attempt by an elector to submit a vote in violation of that pledge effectively constituting resignation from the office of elector. The Act provides a mechanism for filling a vacancy created for that reason or any other, with the substituted elector taking a similar pledge. After a full set of faithful elector votes is obtained, the uniform law further provides that the official notification of the identity of the state's electors that is required under federal law be officially amended by the Governor, so that the state's official list of electors contains the names of only faithful electors.

Additionally, the Act focuses narrowly on the possibility that an elector will break a commitment upon which popular voters were entitled to rely. Thus it explicitly provides that death of a presidential or vice-presidential candidate brings no obligation for an elector to vote for the dead candidate, or, in the case of the death of a presidential candidate, to vote for the vice-presidential running mate.

The possibility of later substitution is central to the Uniform Act's approach to the problem of elector faithlessness, and for that reason Section 5 of the Act instructs the state executive to make explicit in the certificate of ascertainment that later substitution is possible and that where it has proved necessary a later amended certificate of ascertainment will be provided with a revised list of the state's electors. Section 8 then provides for submission of any amended certificate of ascertainment that proves necessary.

The Act addresses a problem that, in practice, may only rarely arise but has the potential to inflict great harm to our electoral process. Uniform adoption of the Act will assure that the solution is consistent among the states, foreclosing attempts to "peel off" electors and helping states to secure their full complements of electoral votes.

For further information about the UFPEA, please contact ULC Legislative Program Director Katie Robinson at (312) 450-6600 or krobinson@uniformlaws.org.

Uniform Faithful Presidential Electors Act Bill Draft (21.0169.04000)

Section 1 of the Act amends subsection 1 of Section 16.1-03-14.

- This change clarifies the state party convention may nominate elector nominees as well as alternate elector nominees. This clarification was requested by the Secretary of State's office because the uniform law provides for alternate elector nominees to be designated.
- The change also cleans up existing language to clarify the nominees must be qualified electors of North Dakota.

Section 2 of the Act amends Section 16.1-06-06.

- This section was brought in because the cross-references in the section needed to be updated.

Section 3 of the Act amends Section 16.1-12-02.

- This section provides clarification regarding alternate elector nominees. This clarification was requested by the Secretary of State's office because the uniform law provides for alternate elector nominees to be designated.
- The change also cleans up existing language to clarify the nominees must be qualified electors of North Dakota.

Section 4 of the Act creates Section 16.1-13-35.

- This new section is the old Section 16.1-14-18. The secretary of state's office requested the section be moved to Chapter 16.1-13.
- The cross-references in the section were updated and were specified to particular sections. Some of the language was updated for styling purposes (ex. "prior to" changed to "before"; "removal" to "relocation," etc.). No substantive changes were made/intended.

Section 5 of the Act creates Section 16.1-13-36.

- This new section is the old Section 16.1-14-19. The secretary of state's office requested the section be moved to Chapter 16.1-13.
- The cross-references in the section were updated and some of the language was updated for styling purposes. Some language was added for clarification purposes but no substantive changes were made/intended.

Section 6 of the Act creates Section 16.1-13-37.

- This new section is the old Section 16.1-14-20. The secretary of state's office requested the section be moved to Chapter 16.1-13.
- Some of the language was updated for styling purposes, but no substantive changes were made/intended.

Section 7 of the Act creates Section 16.1-13-38.

- This new section is the old Section 16.1-14-21. The secretary of state's office requested the section be moved to Chapter 16.1-13.
- Some language was updated for styling purposes and some language was added for clarification purposes, but no substantive changes were made/intended.

Section 8 of the Act creates Section 16.1-13-39.

- This new section is the old Section 16.1-14-22. The secretary of state's office requested the section be moved to Chapter 16.1-13.
- Some language was updated for styling purposes and some language was added for clarification purposes, but no substantive changes were made/intended.

Section 9 of the Act creates Section 16.1-13-40.

- This new section is the old Section 16.1-14-23. The secretary of state's office requested the section be moved to Chapter 16.1-13.
- Some of the language was updated for styling purposes, but no substantive changes were made/intended.

Section 10 of the Act creates Section 16.1-13-41.

- This new section is the old Section 16.1-14-24. The secretary of state's office requested the section be moved to Chapter 16.1-13.
- The secretary of state's office requested a change for clarification purposes regarding where the county auditor delivers the carrier envelopes.
- Some of the language was updated for styling purposes, but no substantive changes were made/intended.

Section 11 of the Act creates Section 16.1-13-42.

- This new section is the old Section 16.1-14-25. The secretary of state's office requested the section be moved to Chapter 16.1-13.
- Some language was updated for styling purposes (such as "persons" was changed to "individuals") and some language was added for clarification purposes, but no substantive changes were made/intended.

Section 12 of the Act creates Section 16.1-13-43.

- This new section is the old Section 16.1-14-26. The secretary of state's office requested the section be moved to Chapter 16.1-13.
- Some language was updated for styling purposes and some language was added for clarification purposes, but no substantive changes were made/intended.

Section 13 of the Act creates Section 16.1-13-44.

- This new section is the old Section 16.1-14-27. The secretary of state's office requested the section be moved to Chapter 16.1-13.
- The cross-references in the section were updated, and some language was added for clarification purposes, but no substantive changes were made/intended.
- **Please note:** A new section for the old Section 16.1-14-28 was not created. This is because Section 1-01-49 includes a definition of "state" noting that when the term "state" is applied to different part of the United States, it includes the District of Columbia.

Section 14 of the Act amends Section 16.1-14-01.

- This section was brought in by the request of the Secretary of State's office. The language was updated for styling purposes, but no substantive changes were made/intended.

Section 15 of the Act amends Section 16.1-14-03.

- This section was brought in by the request of the Secretary of State's office. The language was updated for styling purposes, but no substantive changes were made/intended.

Section 16 of the Act amends Section 16.1-14-08.

- This section was brought in by the request of the Secretary of State's office.
- The language was updated for styling purposes and to provide clarity.
- The clarification was to address the fact that the governor's proclamation only includes the winning electors, not the losing electors.
- The language was also clarified so the certification by the state canvassing board would identify a group of electors who received at least 1/5 of the cast votes.
- No substantive changes were made/intended.

Section 17 of the Act amends Section 16.1-14-09.

- This section was brought in by the request of the Secretary of State's office. The language was updated for styling purposes, but no substantive changes were made/intended.

Section 18 of the Act amends Section 16.1-14-10.

- This section was brought in by the request of the Secretary of State's office. The language was updated for styling purposes and clarification, but no substantive changes were made/intended.

Section 19 of the Act amends Section 16.1-14-11.

- This section was brought in by the request of the Secretary of State's office. The language was updated for styling purposes, but no substantive changes were made/intended.

Section 20 of the Act amends Section 16.1-14-12.

- This section was brought in by the request of the Secretary of State's office. The language was updated for styling purposes and clarification, but no substantive changes were made/intended.

Section 21 of the Act amends Section 16.1-14-13.

- This section was brought in by the request of the Secretary of State's office. The language was updated for styling purposes and clarification, but no substantive changes were made/intended.

Section 22 of the Act amends Section 16.1-14-14.

- This section was brought in by the request of the Secretary of State's office. The language was updated for styling purposes, but no substantive changes were made/intended.

Section 23 of the Act created Chapter 16.1-14.1

- This section codifies the Uniform Faithful Presidential Electors Act. There are two deviations from the uniform law language:
 - In Section 16.1-14.1-05 the governor, rather than the Secretary of State, is the official charged with presiding at the meeting of the presidential electors.
 - In Sections 16.1-14.1-04 and 16.1-14.1-07, instead of referencing an "amended certificate of ascertainment," the language requires the preparation and submission of documentation of an elector vacancy, the method by which the vacancy was filled, and the names of the final list of electors.

Section 24 of the Act repeals several sections.

- Section 16.1-14-05 is being repealed as that section conflicts with the uniform law regarding how to fill a vacancy in the office of a presidential elector.
- Sections 16.1-14-18 through 16.1-14-28 are being repealed as they are being removed from Chapter 16.1-14 and being recreated in Chapter 16.1-13 (with the exception of Section 16.1-14-28 which was noted above under the comments for Section 13 of the Act).

21.0169.04001
Title.

Prepared by the Legislative Council staff for
Representative Klemin
January 12, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1078

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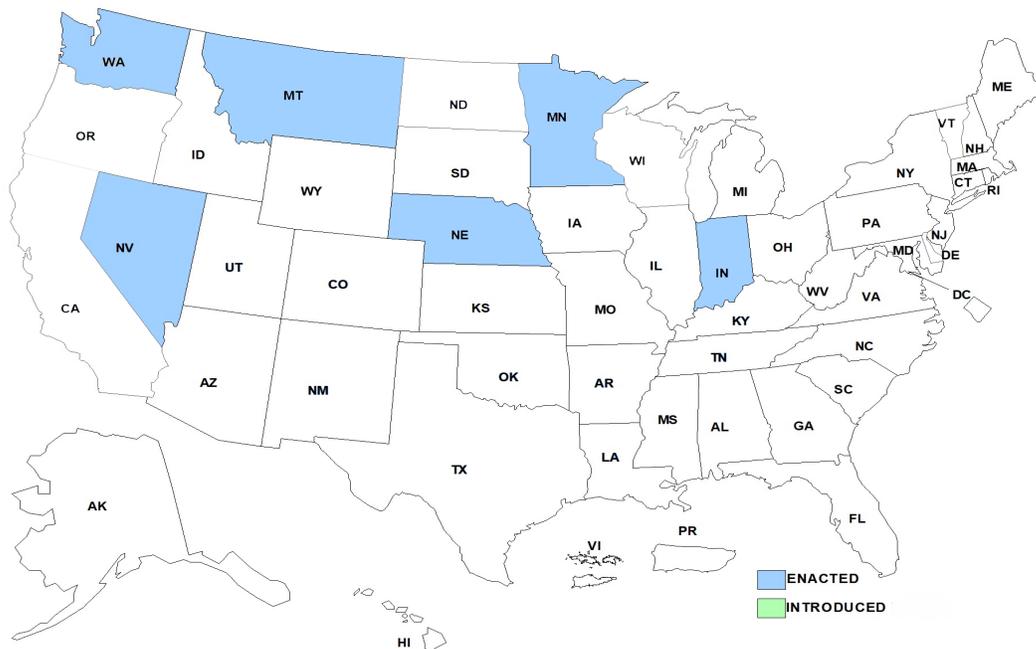
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Re-number accordingly



A Few Facts about
THE UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT

- PURPOSE:** The Uniform Faithful Presidential Electors Act (UFPEA) provides a statutory remedy in the event a state presidential elector fails to vote in accordance with the voters of his or her state. UFPEA has a state-administered pledge of faithfulness, with any attempt by an elector to submit a vote in violation of that pledge, effectively constituting resignation from the office of elector. UFPEA also provides a mechanism for filling a vacancy created for that reason or any other.
- ORIGIN:** Completed by the Uniform Law Commission in 2010.
- ENDORSEMENTS:** Approved by the American Bar Association and included as Suggested State Legislation by the Council of State Governments.
- ENACTED BY:** Indiana, Minnesota, Montana, Nebraska, Nevada, Washington (*List last updated Sept. 30, 2020*).



For further information about the UFPEA, please contact Legislative Counsel Lindsay Beaver at lbeaver@uniformlaws.org or ULC Legislative Program Director Katie Robinson at krobinson@uniformlaws.org.

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Additionally, the Act focuses narrowly on the possibility that an elector will break a commitment upon which popular voters were entitled to rely. Thus it explicitly provides that death of a presidential or vice-presidential candidate brings no obligation for an elector to vote for the dead candidate, or, in the case of the death of a presidential candidate, to vote for the vice-presidential running mate.

The possibility of later substitution is central to the Uniform Act's approach to the problem of elector faithlessness, and for that reason Section 5 of the Act instructs the state executive to make explicit in the certificate of ascertainment that later substitution is possible and that where it has proved necessary a later amended certificate of ascertainment will be provided with a revised list of the state's electors. Section 8 then provides for submission of any amended certificate of ascertainment that proves necessary.

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For further information about the UFPEA, please contact ULC Legislative Program Director Katie Robinson at (312) 450-6600 or krobinson@uniformlaws.org.

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 19, 2021

TO: Chairman Larry Klemin and Members of the House 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 for administering North Dakota's Presidential Electoral College each four years. However, to establish a seamless connection between the two Chapters, this bill transfers ten sections from Chapter 16.1-14, Presidential Electors, to Chapter 16.1-13, General Elections, where they are more appropriately located.

These ten sections 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 of the ten sections happens in Section 4 beginning on page 4 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 in Section 1.

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.

Representative Klemin will explain the features of the Uniform Act.

As a part of his presentation, he will offer amendments to match the text to the procedures and instructions received from the National Archivist. They have been followed in the seven North Dakota Presidential Elector Colleges that I have had the honor to administer.

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*

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
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Repeal in New Chapter

Chapter 16.1-13-35

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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)

*Now
16.1-13-37
page 4
Sec 6*

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.

*Now
16.1-13-38
page 5
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.

*Now
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.

*Now
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:

*Now
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

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1078

Page 11, line 25, remove "an"

Page 11, line 26, replace "amended certificate of ascertainment stating" with "documentation of the vacancy, the method by which the vacancy was filled, and"

Page 13, line 22, replace "an amended certificate of ascertainment" with "documentation of the vacancy, the method by which the vacancy was filled, and the names of the final list of electors"

Page 13, line 22, replace "it" with "the documentation"

Page 13, line 24, remove "amended certificate of"

Page 13, line 25, replace "ascertainment" with "documentation"

Page 13, line 25, remove "amended"

Page 13, line 26, replace "certificate of ascertainment" with "documentation"

Page 13, line 27, replace "amended certificate of ascertainment" with "signed documentation"

Page 13, line 31, replace "amended certificate of ascertainment" with "signed documentation"

Renumber accordingly

2021 SENATE JUDICIARY

HB 1078

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1078
2/10/2021

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, 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 16.1-14.1 of the North Dakota Century Code, relating to presidential elections and the adoption of the Uniform Faithful Presidential Electors Act; to amend and reenact subsection 1 of section 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, 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 Dakota Century Code, relating to nominating presidential electors and alternate electors, and presidential electors' roles and procedures; and to repeal sections 16.1-14-05, 16.1-14-18, 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, 16.1-14-26, 16.1-14-27, and 16.1-14-28 of the North Dakota Century Code, relating to the filling of a vacancy of a presidential elector and voting of new and former residents at presidential elections.

Hearing called to order, all Senators are present: **Myrdal, Luick, Dwyer, Bakke, Fors, Heitkamp, and Larson** [10:00]

Discussion Topics:

- Existing Presidential Elector laws in North Dakota
- Process of deciding Presidential electors

Rep. Lawrence Klemin provided testimony in favor #6213 [10:00]

Secretary of State Alvin Jaeger provided testimony in favor #6152 [10:07]

Dep Secretary of State Jim Silrum provided testimony in favor [10:20]

Bill held until Monday February 15th 2021

Hearing adjourned [10:36]

Jamal Omar, Committee Clerk

TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE BILL NO. 1078
SENATE JUDICIARY COMMITTEE
FEBRUARY 10, 2021

Members of the Senate Judiciary Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of House Bill 1078, which enacts the Uniform Faithful Presidential Electors Act (UFPEA) and also reorganizes and updates the existing North Dakota statutes on presidential electors. I will testify on Section 23 of the bill, which creates Chapter 16.1-14.1, the Uniform Faithful Presidential Electors Act. Secretary of State Jaeger will testify on the rest of the bill.

The U.S. Constitution provides for the election of the President and Vice President by the Electoral College based on the votes cast for those offices in the States. Attached are relevant provisions from the U.S. Constitution relating to electors. Each State is entitled to a number of electors equal to the total number of its Senators and Representatives in Congress. North Dakota is therefore entitled to 3 electoral votes.

Every 4 years after the general election, the electors are required to be chosen in the manner that the Legislature directs. In North Dakota, this means that the party whose candidates for President and Vice President win the popular vote are selected as the electors. North Dakota law then sets out the process by which the electors cast their votes for President and Vice President on a date selected by Congress that is uniform throughout the country. That occurred on Dec. 14. Then the ballots are sealed and sent to Congress to be opened in a joint session of the Senate and the House of Representatives on Jan. 6. The candidates with the most votes by the Electoral College are then elected as President and Vice President.

There is currently nothing in North Dakota law that would prevent an elector from voting contrary to the popular vote in this State. For instance, an elector chosen by one party as a result of the popular vote could decide to cast a vote for the candidates of the party that lost the popular vote.

A number of States have passed legislation requiring an elector to vote for the candidates of the party that won the popular vote in the State. Colorado has such a law, and it was challenged in Court. Last July, the United States Supreme Court unanimously upheld State laws that remove or punish presidential electors who refuse to cast their votes for the candidates they pledged to support. Electors do not have discretion in how they vote. The United States Supreme Court upheld Colorado's adoption of the Uniform Faithful Presidential Electors Act.

I am one of the Commissioners on the North Dakota Commission on Uniform State Laws. After the decision by the United States Supreme Court, the North Dakota Commission decided to introduce the UFPEA here to also require our electors to vote for the candidates whose party won the election in our State. I am also attaching

relevant materials from the Uniform Law Commission, including a summary of the UFPEA and why North Dakota should enact it.

Sections 1 through 22 of House Bill 1078 clarify and reorganize the existing law. Secretary Jaeger will explain these sections in more detail. Section 23 of the bill creates Chapter 16.1-14.1, which is the Uniform Faithful Presidential Electors Act. Each political party contesting the presidential election must submit the names of an elector and alternate elector for each elector position. The State's electors are then the winning elector nominees under the laws of this State.

Each elector nominee and alternate must execute a pledge that says, "If selected for the position of elector, I agree to serve and mark my ballots for president and vice president for the nominees of those offices of the party that nominated me."

The Governor presides at the meeting of the electors where the electors vote and cast their ballots for President and Vice President. The Secretary of State examines the ballots to ensure that the electors have voted consistent with their pledges. If a ballot is blank or if an elector has not voted consistent with his pledge, then that elector position is deemed vacated and a substitute elector takes his place and votes. The Secretary of State certifies the vote, and the ballots are sent to Congress to be included in the vote of the Electoral College.

This process for electing the President and Vice President has been the law of the United States since 1804. House Bill 1078 creates a method for ensuring that electors vote as they have pledged.

I urge your support for HB 1078. Thank you.

The Formal Constitutional Process

Under the Constitution, each state is entitled to a number of electors equal to its total representation in the two houses of Congress. ...

Electors are chosen "in such manner as [each state's] . . . legislature may direct" and every four years they meet in separate state meetings on a date chosen by Congress. That date is constitutionally required to be uniform throughout the country. *See* U.S. CONST., Art. II, § 1, cls. 2 & 3, Am. XXIII. At those state meetings the electors choose the nation's president and vice president.

US Constitution Article 2 Section 1 (in part) The Executive

The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

ARTICLES OF AMENDMENT

ARTICLE 12

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves. They shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each; which lists they

shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice-president. A quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

Source:

Proposed by Congress on December 12, 1803; declared to have been ratified by the legislatures of three-fourths of the states on September 25, 1804.



UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT

Summary

Almost all presidential electors in this country's history have voted for their parties' candidates, but in a few incidents electors have not voted as directed by the party. Fortunately, that occasional "faithless" elector has not changed the outcome of a presidential election, but that is in good part because most Electoral College counts are not very close. In several elections where close Electoral College votes seemed possible (but did not come about), campaigns have made plans to court faithlessness, and some electors have contemplated voting faithlessly.

The **Uniform Faithful Presidential Electors Act** addresses the problem of elector who decides to vote inconsistently with the way they were elected to vote by the people of the state. The UFPEA creates a procedure that helps assure that all states attempting to appoint a complete complement of electors will succeed and maintains the sanctity of the electoral process.

The emergence of political parties, the designation by those parties of presidential and vice-presidential candidates, and the parties' nomination of presidential electors in each state who it was assumed would vote for the parties' presidential and vice-presidential candidates has created dissonance between what the Constitution envisaged and the realities of the electoral process. In many states the ballot contains no mention of a role for electors at all. Instead, the names of candidates for president and vice president appear on the ballots, accompanied by political party designation. Votes for these candidates are then turned by state law into votes for electors. Even where ballots do make some mention of electors, the names of presidential and vice-presidential candidates appear and are typically given greater prominence. To all appearances voters are thus casting ballots directly for presidential and vice-presidential candidates. That is surely the working assumption of the overwhelming preponderance of the voters in the country, even if some of them — perhaps even many — appreciate that the eventual winner is determined by the electoral vote count.

In the contemporary electoral context, faithless votes hold the potential for great mischief, producing a president or vice-president (or both) other than those for whom voters were led to believe they were casting their votes. In order to address electoral mischief, approximately thirty states have taken some action to discourage or forbid faithless electoral votes. Some employ pledges of faithfulness, administered in some cases by political parties and in other cases as part of the ballot qualification process. Others forbid faithlessness, some with civil, or even criminal penalties. And some provide that faithless voting constitutes resignation from the office of elector.

The variation in state laws opens up the possibility for disputes about whether a faithless vote is to be counted, and also whether a faithful vote might be substituted for it. Different conclusions might be reached under different state laws, and there might be further dispute about the consequences of one resolution or another for the number of appointed electors — the base across the country for determining the required majority. These various potential sources of discord and confusion argue strongly in favor of a uniform law adopted by every state that would forbid or nullify elector faithlessness and assure that each state submits an electoral vote count that reflects faithful voting.

The UFPEA proposes a state-administered pledge of faithfulness, with any attempt by an elector to submit a vote in violation of that pledge effectively constituting resignation from the office of elector. The Act provides a mechanism for filling a vacancy created for that reason or any other, with the substituted elector taking a similar pledge. After a full set of faithful elector votes is obtained, the uniform law further provides that the official notification of the identity of the state's electors that is required under federal law be officially amended by the Governor, so that the state's official list of electors contains the names of only faithful electors.

Additionally, the Act focuses narrowly on the possibility that an elector will break a commitment upon which popular voters were entitled to rely. Thus it explicitly provides that death of a presidential or vice-presidential candidate brings no obligation for an elector to vote for the dead candidate, or, in the case of the death of a presidential candidate, to vote for the vice-presidential running mate.

The possibility of later substitution is central to the Uniform Act's approach to the problem of elector faithlessness, and for that reason Section 5 of the Act instructs the state executive to make explicit in the certificate of ascertainment that later substitution is possible and that where it has proved necessary a later amended certificate of ascertainment will be provided with a revised list of the state's electors. Section 8 then provides for submission of any amended certificate of ascertainment that proves necessary.

The Act addresses a problem that, in practice, may only rarely arise but has the potential to inflict great harm to our electoral process. Uniform adoption of the Act will assure that the solution is consistent among the states, foreclosing attempts to "peel off" electors and helping states to secure their full complements of electoral votes.

For further information about the UFPEA, please contact ULC Legislative Program Director Katie Robinson at (312) 450-6600 or krobinson@uniformlaws.org.



Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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WHY YOUR STATE SHOULD ADOPT THE UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT

In 2010, the Uniform Law Commission (ULC) approved the **Uniform Faithful Presidential Electors Act (UFPEA)**, to address the rare but historically persistent problem of presidential electors who do not adhere to their obligation to vote faithfully for their parties' candidates. Many states have enacted provisions to deal with "faithless" electors or to ensure that those selected discharge their duty faithfully – however, the solutions vary, and conflicting results or discounted votes could cause confusion or an indecisive outcome in the Electoral College.

Moreover, the United States Supreme Court unanimously upheld in *Chiafalo v. Washington*, 591 U.S. ____ (2020), state laws that remove or punish rogue presidential electors who refuse to cast their votes for the presidential candidate they pledged to support. In *Colorado Department of State v. Baca*, 591 U.S. ____ (2020), decided the same day as *Chiafalo*, the U.S. Supreme Court reversed a Tenth Circuit opinion that had declared Colorado's adoption of the UFPEA to be an unconstitutional limit on elector discretion.

In other words, the Supreme Court has made clear that states have the authority to bind their electors to the candidates they have pledged to support. By enacting legislation like UFPEA, states assure citizens that their votes will not be overridden by a single elector and protects the country from the chaos that would ensue if a handful of electors could negate the will of the voters.

The UFPEA provides an effective remedy to prevent the potential harm from faithless elector voting. Some important reasons why your state should adopt the UFPEA include:

- **UFPEA provides the voters of the state with the confidence** that the votes they have cast will be honored when the Electoral College meets to decide the outcome of presidential elections.
- **UFPEA prevents parties and candidates from engaging in nefarious behavior** such as the courtship of faithless electors in close or particularly charged election in order to sway the outcome in favor of one candidate.
- **UFPEA creates a relatively simple process** by which electors commit to vote as the popular will and the parties they represent intend.
- **UFPEA prevents the potentially damaging consequences of rogue elector voting.**
- **UFPEA ensures the orderly operation of states' Electoral College voting** and protecting the will of the people as expressed by the underlying election.

For further information about UFPEA please contact Lindsay Beaver, Legislative Counsel at lbeaver@uniformlaws.org, or Katie Robinson, Legislative Program Director & Communications Officer at krobinson@uniformlaws.org.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

ALVIN A. JAEGER
SECRETARY OF STATE

WEBSITE sos.nd.gov



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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 administering 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)

Testimony HB 1078
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Page two

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
38
39
40
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 5
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 3
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 5
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 3
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

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1078
2/15/2021

A BILL for an Act to relating to the filling of a vacancy of a presidential elector and voting of new and former residents at presidential elections.

Hearing called to order all Senators Present: **Myrdal, Luick, Dwyer, Bakke, Fors, Heitkamp, Larson.** [3:41]

Discussion Topics:

- North Dakota electoral college procedures
- Electoral College contingency plan

Liz Fordahl, Legislative Intern provided neutral testimony [3:43]

Jim Silrum, ND Deputy Secretary of State provided clarifying testimony [3:44]

Senator Luick Moved to amend the bill

[LC 21.0169.05001]

Senator Myrdal Seconded the motion

Vote Passed 7-0-0

Senator Myrdal Moved a DO PASS AS AMENDED Recommendation

Senator Heitkamp Seconded the motion

Vote Passed 7-0-0

Senator Luick Carried the bill

Additional written testimony:

Rep. Lawrence Klemin provided testimony in favor #6213

Al Jaeger, ND Secretary of State provided testimony in favor #6152

Hearing Adjourned [3:58]

Jamal Omar, Committee Clerk

Motion to Amend HB 1078	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

DO PASS AS AMENDED On HB 1078	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

February 12, 2021

SK 2/11
100

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1078

Page 1, line 8, remove the second "and"

Page 1, line 12, after "elections" insert "; and to provide a contingent effective date"

Page 7, line 10, replace "16.1-14-35" with "16.1-13-35"

Page 7, line 10, replace "16.1-14-44" with "16.1-13-44"

Page 7, after line 13, insert:

"SECTION 14. AMENDMENT. Section 16.1-13-44 of the North Dakota Century Code, as created by section 13 of this Act, is amended and reenacted as follows:

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

Except as provided in section 16.1-14-29 and sections 16.1-13-35 through 16.1-13-44, the provisions of law relating to absent voters' ballots also apply to the casting and counting of presidential elector ballots of new residents, the furnishing of election supplies, ballots, canvassing of ballots, and making proper returns of the results of the election."

Page 14, after line 6, insert:

"SECTION 26. CONTINGENT EFFECTIVE DATE. Section 14 of this Act becomes effective at the time provided in Senate Bill No. 2271 if section 16.1-14-29, as created by Senate Bill No. 2271, is approved by the sixty-seventh legislative assembly."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1078, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1078 was placed on the Sixth order on the calendar.

Page 1, line 8, remove the second "and"

Page 1, line 12, after "elections" insert "; and to provide a contingent effective date"

Page 7, line 10, replace "16.1-14-35" with "16.1-13-35"

Page 7, line 10, replace "16.1-14-44" with "16.1-13-44"

Page 7, after line 13, insert:

"SECTION 14. AMENDMENT. Section 16.1-13-44 of the North Dakota Century Code, as created by section 13 of this Act, is amended and reenacted as follows:

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

Except as provided in section 16.1-14-29 and sections 16.1-13-35 through 16.1-13-44, the provisions of law relating to absent voters' ballots also apply to the casting and counting of presidential elector ballots of new residents, the furnishing of election supplies, ballots, canvassing of ballots, and making proper returns of the results of the election."

Page 14, after line 6, insert:

"SECTION 26. CONTINGENT EFFECTIVE DATE. Section 14 of this Act becomes effective at the time provided in Senate Bill No. 2271 if section 16.1-14-29, as created by Senate Bill No. 2271, is approved by the sixty-seventh legislative assembly."

Renumber accordingly

TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE BILL NO. 1078
SENATE JUDICIARY COMMITTEE
FEBRUARY 10, 2021

Members of the Senate Judiciary Committee. I am Lawrence R. Klemm, Representative from District 47 in Bismarck. I am here to testify in support of House Bill 1078, which enacts the Uniform Faithful Presidential Electors Act (UFPEA) and also reorganizes and updates the existing North Dakota statutes on presidential electors. I will testify on Section 23 of the bill, which creates Chapter 16.1-14.1, the Uniform Faithful Presidential Electors Act. Secretary of State Jaeger will testify on the rest of the bill.

The U.S. Constitution provides for the election of the President and Vice President by the Electoral College based on the votes cast for those offices in the States. Attached are relevant provisions from the U.S. Constitution relating to electors. Each State is entitled to a number of electors equal to the total number of its Senators and Representatives in Congress. North Dakota is therefore entitled to 3 electoral votes.

Every 4 years after the general election, the electors are required to be chosen in the manner that the Legislature directs. In North Dakota, this means that the party whose candidates for President and Vice President win the popular vote are selected as the electors. North Dakota law then sets out the process by which the electors cast their votes for President and Vice President on a date selected by Congress that is uniform throughout the country. That occurred on Dec. 14. Then the ballots are sealed and sent to Congress to be opened in a joint session of the Senate and the House of Representatives on Jan. 6. The candidates with the most votes by the Electoral College are then elected as President and Vice President.

There is currently nothing in North Dakota law that would prevent an elector from voting contrary to the popular vote in this State. For instance, an elector chosen by one party as a result of the popular vote could decide to cast a vote for the candidates of the party that lost the popular vote.

A number of States have passed legislation requiring an elector to vote for the candidates of the party that won the popular vote in the State. Colorado has such a law, and it was challenged in Court. Last July, the United States Supreme Court unanimously upheld State laws that remove or punish presidential electors who refuse to cast their votes for the candidates they pledged to support. Electors do not have discretion in how they vote. The United States Supreme Court upheld Colorado's adoption of the Uniform Faithful Presidential Electors Act.

I am one of the Commissioners on the North Dakota Commission on Uniform State Laws. After the decision by the United States Supreme Court, the North Dakota Commission decided to introduce the UFPEA here to also require our electors to vote for the candidates whose party won the election in our State. I am also attaching

relevant materials from the Uniform Law Commission, including a summary of the UFPEA and why North Dakota should enact it.

Sections 1 through 22 of House Bill 1078 clarify and reorganize the existing law. Secretary Jaeger will explain these sections in more detail. Section 23 of the bill creates Chapter 16.1-14.1, which is the Uniform Faithful Presidential Electors Act. Each political party contesting the presidential election must submit the names of an elector and alternate elector for each elector position. The State's electors are then the winning elector nominees under the laws of this State.

Each elector nominee and alternate must execute a pledge that says, "If selected for the position of elector, I agree to serve and mark my ballots for president and vice president for the nominees of those offices of the party that nominated me."

The Governor presides at the meeting of the electors where the electors vote and cast their ballots for President and Vice President. The Secretary of State examines the ballots to ensure that the electors have voted consistent with their pledges. If a ballot is blank or if an elector has not voted consistent with his pledge, then that elector position is deemed vacated and a substitute elector takes his place and votes. The Secretary of State certifies the vote, and the ballots are sent to Congress to be included in the vote of the Electoral College.

This process for electing the President and Vice President has been the law of the United States since 1804. House Bill 1078 creates a method for ensuring that electors vote as they have pledged.

I urge your support for HB 1078. Thank you.

The Formal Constitutional Process

Under the Constitution, each state is entitled to a number of electors equal to its total representation in the two houses of Congress. ...

Electors are chosen "in such manner as [each state's] . . . legislature may direct" and every four years they meet in separate state meetings on a date chosen by Congress. That date is constitutionally required to be uniform throughout the country. *See* U.S. CONST., Art. II, § 1, cls. 2 & 3, Am. XXIII. At those state meetings the electors choose the nation's president and vice president.

US Constitution Article 2 Section 1 (in part) The Executive

The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

ARTICLES OF AMENDMENT

ARTICLE 12

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves. They shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each; which lists they

shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice-president. A quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

Source:

Proposed by Congress on December 12, 1803; declared to have been ratified by the legislatures of three-fourths of the states on September 25, 1804.



UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT

Summary

Almost all presidential electors in this country's history have voted for their parties' candidates, but in a few incidents electors have not voted as directed by the party. Fortunately, that occasional "faithless" elector has not changed the outcome of a presidential election, but that is in good part because most Electoral College counts are not very close. In several elections where close Electoral College votes seemed possible (but did not come about), campaigns have made plans to court faithlessness, and some electors have contemplated voting faithlessly.

The **Uniform Faithful Presidential Electors Act** addresses the problem of elector who decides to vote inconsistently with the way they were elected to vote by the people of the state. The UFPEA creates a procedure that helps assure that all states attempting to appoint a complete complement of electors will succeed and maintains the sanctity of the electoral process.

The emergence of political parties, the designation by those parties of presidential and vice-presidential candidates, and the parties' nomination of presidential electors in each state who it was assumed would vote for the parties' presidential and vice-presidential candidates has created dissonance between what the Constitution envisaged and the realities of the electoral process. In many states the ballot contains no mention of a role for electors at all. Instead, the names of candidates for president and vice president appear on the ballots, accompanied by political party designation. Votes for these candidates are then turned by state law into votes for electors. Even where ballots do make some mention of electors, the names of presidential and vice-presidential candidates appear and are typically given greater prominence. To all appearances voters are thus casting ballots directly for presidential and vice-presidential candidates. That is surely the working assumption of the overwhelming preponderance of the voters in the country, even if some of them — perhaps even many — appreciate that the eventual winner is determined by the electoral vote count.

In the contemporary electoral context, faithless votes hold the potential for great mischief, producing a president or vice-president (or both) other than those for whom voters were led to believe they were casting their votes. In order to address electoral mischief, approximately thirty states have taken some action to discourage or forbid faithless electoral votes. Some employ pledges of faithfulness, administered in some cases by political parties and in other cases as part of the ballot qualification process. Others forbid faithlessness, some with civil, or even criminal penalties. And some provide that faithless voting constitutes resignation from the office of elector.

The variation in state laws opens up the possibility for disputes about whether a faithless vote is to be counted, and also whether a faithful vote might be substituted for it. Different conclusions might be reached under different state laws, and there might be further dispute about the consequences of one resolution or another for the number of appointed electors — the base across the country for determining the required majority. These various potential sources of discord and confusion argue strongly in favor of a uniform law adopted by every state that would forbid or nullify elector faithlessness and assure that each state submits an electoral vote count that reflects faithful voting.

The UFPEA proposes a state-administered pledge of faithfulness, with any attempt by an elector to submit a vote in violation of that pledge effectively constituting resignation from the office of elector. The Act provides a mechanism for filling a vacancy created for that reason or any other, with the substituted elector taking a similar pledge. After a full set of faithful elector votes is obtained, the uniform law further provides that the official notification of the identity of the state's electors that is required under federal law be officially amended by the Governor, so that the state's official list of electors contains the names of only faithful electors.

Additionally, the Act focuses narrowly on the possibility that an elector will break a commitment upon which popular voters were entitled to rely. Thus it explicitly provides that death of a presidential or vice-presidential candidate brings no obligation for an elector to vote for the dead candidate, or, in the case of the death of a presidential candidate, to vote for the vice-presidential running mate.

The possibility of later substitution is central to the Uniform Act's approach to the problem of elector faithlessness, and for that reason Section 5 of the Act instructs the state executive to make explicit in the certificate of ascertainment that later substitution is possible and that where it has proved necessary a later amended certificate of ascertainment will be provided with a revised list of the state's electors. Section 8 then provides for submission of any amended certificate of ascertainment that proves necessary.

The Act addresses a problem that, in practice, may only rarely arise but has the potential to inflict great harm to our electoral process. Uniform adoption of the Act will assure that the solution is consistent among the states, foreclosing attempts to "peel off" electors and helping states to secure their full complements of electoral votes.

For further information about the UFPEA, please contact ULC Legislative Program Director Katie Robinson at (312) 450-6600 or krobinson@uniformlaws.org.



Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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WHY YOUR STATE SHOULD ADOPT THE UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT

In 2010, the Uniform Law Commission (ULC) approved the **Uniform Faithful Presidential Electors Act (UFPEA)**, to address the rare but historically persistent problem of presidential electors who do not adhere to their obligation to vote faithfully for their parties' candidates. Many states have enacted provisions to deal with "faithless" electors or to ensure that those selected discharge their duty faithfully – however, the solutions vary, and conflicting results or discounted votes could cause confusion or an indecisive outcome in the Electoral College.

Moreover, the United States Supreme Court unanimously upheld in *Chiafalo v. Washington*, 591 U.S. ____ (2020), state laws that remove or punish rogue presidential electors who refuse to cast their votes for the presidential candidate they pledged to support. In *Colorado Department of State v. Baca*, 591 U.S. ____ (2020), decided the same day as *Chiafalo*, the U.S. Supreme Court reversed a Tenth Circuit opinion that had declared Colorado's adoption of the UFPEA to be an unconstitutional limit on elector discretion.

In other words, the Supreme Court has made clear that states have the authority to bind their electors to the candidates they have pledged to support. By enacting legislation like UFPEA, states assure citizens that their votes will not be overridden by a single elector and protects the country from the chaos that would ensue if a handful of electors could negate the will of the voters.

The UFPEA provides an effective remedy to prevent the potential harm from faithless elector voting. Some important reasons why your state should adopt the UFPEA include:

- **UFPEA provides the voters of the state with the confidence** that the votes they have cast will be honored when the Electoral College meets to decide the outcome of presidential elections.
- **UFPEA prevents parties and candidates from engaging in nefarious behavior** such as the courtship of faithless electors in close or particularly charged election in order to sway the outcome in favor of one candidate.
- **UFPEA creates a relatively simple process** by which electors commit to vote as the popular will and the parties they represent intend.
- **UFPEA prevents the potentially damaging consequences of rogue elector voting.**
- **UFPEA ensures the orderly operation of states' Electoral College voting** and protecting the will of the people as expressed by the underlying election.

For further information about UFPEA please contact Lindsay Beaver, Legislative Counsel at lbeaver@uniformlaws.org, or Katie Robinson, Legislative Program Director & Communications Officer at krobinson@uniformlaws.org.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

ALVIN A. JAEGER
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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

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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39

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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)

*Now
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.

*Now
16.1-13-38
page 5
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.

*Now
16.1-13-39
page 3
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.

*Now
16.1-13-40
page 5
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:

*Now
16.1-13-41
page 3
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