# Fifty-ninth Legislative Assembly of North Dakota
# In Regular Session Commencing Tuesday, January 4, 2005

SENATE BILL NO. 2336
(Senator Krebsbach)
(Representative Haas)

AN ACT to amend and reenact sections 16.1-07-01, 16.1-07-05, 16.1-07-06, 16.1-07-08, 16.1-07-08.1, and 16.1-07-12 of the North Dakota Century Code, relating to absentee voting.

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

**SECTION 1. AMENDMENT.** Section 16.1-07-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Any qualified elector of this state, including an individual who is in the armed forces of the United States, is in the merchant marine of the United States, or is a United States citizen living outside the United States who resided in this state immediately prior to the individual's departure from the United States, may vote an absent voter's ballot at any general, special, or primary state election, any county election, or any city or school district election.

2. A ~~qualified elector who is a citizen of the United States and lives outside the United States or a~~ citizen of the United States who is eighteen years of age or older ~~and~~, has never lived in the United States, and whose parent is a qualified elector of the state may vote absentee in this state pursuant to this chapter if the individual:

   a. Does not maintain a domicile;

   b. Is not registered to vote in any other state, territory, or possession of the United States;

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

   d. Possesses a valid passport or card of identity and registration issued under the authority of the secretary of state of the United States.

   Such an elector may vote only in federal elections, which means any election held solely or in part for the purpose of electing or nominating any candidate for the office of president, vice president, presidential elector, member of the United States senate, or member of the United States house of representatives.

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

**SECTION 2. AMENDMENT.** Section 16.1-07-05 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-05. Time for applying for ballot - Applications and voting for uniformed citizens and for citizens living outside the United States - Emergency situations - Sufficient time for application and ballot return.**

1. At any time in an election year, any qualified elector may apply to the county auditor, the auditor or clerk of the city, or the business manager of the school district, as the case may be, by facsimile or otherwise, for an official ballot to be voted at that election. A voter may obtain an application form for an absent voter's ballot for a general, special, primary, or

county election from either the county auditor or a city auditor. The application form~~, for a member of the United States armed forces or the United States merchant marine or for a qualified elector living outside the United States,~~ must include a space for the applicant to indicate whether the application is for all statewide elections in the calendar year or only for the election that is immediately after the date of the application.

2. An applicant who is a qualified elector and on active duty as a member of the United States armed forces or the United States merchant marine may receive an absentee ballot by mail, facsimile, or electronic mail. In the event that returning the voted ballot by mail is not practicable, qualified electors meeting the stated criteria of this subsection may return a voted ballot and other required documents to the county auditor by means of facsimile transmission or electronic mail. To return a voted ballot and other required documents by electronic mail, the eligible voter must have access to the technology to scan the documents, save the documents in a secure format approved by the secretary of state, and return the documents as an electronic mail attachment directly to the electronic mail address assigned by the auditor, clerk, or business manager for that purpose prior to midnight in the voter's county of residence on the day before the election. The secretary of state shall develop written guidelines relating to security measures for voted ballots returned by electronic mail.

3. Spouses, children, or other dependents of active duty members of the United States armed forces or merchant marine who are qualified electors and stationed as a family outside the United States are granted the same absentee voting rights as the individual's spouse, parent, or guardian has under subsection 2.

4. An applicant who is a ~~member of the United States armed forces or the United States merchant marine living outside the United States or is a~~ qualified elector living outside the United States may ~~apply for and vote by facsimile if otherwise qualified to apply for and vote by absentee ballot. An auditor, clerk, or business manager may send and receive facsimile absentee ballot applications and facsimile absentee ballots to any individual eligible to apply for and vote by facsimile under this section~~ receive an absentee ballot by mail, facsimile, or electronic mail. If returning the voted ballot by mail is not practicable, a qualified elector may return a voted ballot and other required documents to the county auditor by means of facsimile transmission or electronic mail. The elector must have access to the technology to scan the documents, save the documents in a secure format approved by the secretary of state, and return the documents as an electronic mail attachment directly to the electronic mail address assigned by the auditor, clerk, or business manager for that purpose before midnight in the voter's county of residence on the day before the election. The secretary of state shall develop written guidelines relating to security measures for voted ballots returned by electronic mail.

5. No auditor or clerk may issue ballots for absentee voters on the day of the election except to persons prevented from voting in person on the day of the election due to an emergency. A person requesting an absentee ballot on the day of the election due to an emergency must do so through an agent as set forth in this chapter. An agent may represent only one person. The absentee ballot must be returned to the county auditor's office by four p.m. on the day of the election.

6. A completed application must be submitted to the appropriate election official in a timely manner so as to allow the applicant to receive, complete, and mail the absent voter's ballot before the day of the election.

**SECTION 3. AMENDMENT.** Section 16.1-07-06 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Application for an absent voter's ballot must be made on a form, prescribed by the secretary of state, to be furnished by the proper officer of the county, city, or school district in which the applicant is an elector, on any form, approved by the secretary of state, or any blank containing the following information:

   a. The applicant's name.

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

   c. The applicant's mailing address.

   d. The applicant's current home telephone number.

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

   f. The date of the request.

   g. An affirmation that the applicant has resided, or will reside, in the precinct for at least thirty days next preceding the election.

   h. The applicant's signature.

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

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

2. ~~A~~ The application for a qualified elector ~~absent from the state is not required to file an application for an absent voter's ballot for any statewide election if either of the following apply~~ serving on active duty as a member of the United States armed forces, merchant marine, or a family member who is a qualified elector and stationed outside the United States together with the individual's spouse, parent, or guardian must include the following additional information if the voter desires to vote by facsimile or electronic mail:

   a. ~~The elector is a member, or spouse or dependent of a member, of the United States armed forces or merchant marine living outside the United States.~~ Facsimile telephone number; or

   b. ~~The elector is a United States citizen living outside the United States~~ Electronic mail address.

   ~~If the qualified elector furnishes the county auditor with a current mailing address and the elector's residential address, the county auditor either shall mail to the qualified elector a ballot with a return envelope and instructions or send to the qualified elector the ballot and instructions by facsimile for voting for any statewide election in that calendar year.~~

3. The application for a qualified elector living outside the United States must include a facsimile telephone number or electronic mail address if the voter desires to vote by facsimile or electronic mail.

**SECTION 4. AMENDMENT.** Section 16.1-07-08 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

   Precinct _____
   Name _____
   Residential Address _____
   City _____ ND Zip Code _____
   Under penalty of possible criminal prosecution for making a false statement, I swear that I reside at the residential address provided above, that I have resided in my precinct for at least thirty days next preceding the election, and this is the only ballot I will cast in this election.
   Applicant's Signature _____
   Date _____

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

3. ~~The county auditor, city auditor, or business manager of the school district, as the case may be, may challenge the right of anyone to vote an absent voter's ballot whom that officer knows or has reason to believe is not a qualified elector. When challenging a voter who has applied for an absentee voter's ballot, the election official shall follow the procedures and use the affidavit provided for in section 16.1-05-06 and include a voter's affidavit with the outgoing absentee voter's ballot along with an explanation that the voter's right to vote is being challenged and that the voter's affidavit must be completed and returned with the voter's absentee voter's ballot to be accepted.~~

~~4.~~ Each person requesting an absent voter's ballot under this chapter must be provided a set of instructions, prescribed by the secretary of state, sufficient to describe the process of voting by absent voter's ballot. The voting instructions must contain a statement informing the individual that the individual is entitled to complete the absent voter's ballot in secrecy.

~~5.~~ 4. Each individual requesting an absent voter's ballot under this chapter who cannot read the English language or who because of blindness or other disability is unable to mark the voter's ballot, upon request, may receive the assistance of any person of the voter's choice, other than the voter's employer, an officer or agent of the voter's union, a candidate running in that election, or a relative of a candidate as described in subsection 2 of section 16.1-05-02, in marking the voter's ballot.

**SECTION 5. AMENDMENT.** Section 16.1-07-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-08.1. Procedures for voting with special write-in or federal write-in absentee ballot.**

1. Notwithstanding any other provision of this chapter, a qualified absentee elector may apply to the county auditor for a special write-in absentee ballot. This ballot may be used to vote for presidential electors and members of the United States senate and of the United States house of representatives.

2. The application for a special write-in absentee ballot may be made on a form prescribed by the secretary of state. In order to qualify for a special write-in absentee ballot, the voter shall state on the application that the voter is unable to vote by regular absentee ballot or in person due to requirements of military service or due to living in isolated or extremely remote areas of the world.

3. Upon receipt of the application, the county auditor shall issue the special write-in absentee ballot, which must be in the form prescribed by the secretary of state. The ballot must permit the elector to vote by writing in a party preference for each office, the names of specific candidates for each office, or the name of the person whom the voter prefers for each office.

4. If the voter is temporarily residing outside the United States or is a member of the United States armed forces, merchant marine, or a family member and a qualified elector, the voter may use the federal write-in absentee ballot in general, special, and primary elections for local, state, or federal offices.

5. If the voter is residing outside the United States, or is a member of the United States armed forces, merchant marine, or a family member, and a qualified elector stationed outside the United States, the voter may use the federal write-in absentee ballot transmission envelope as an absentee ballot application simultaneously with the submission of the federal write-in absentee ballot if the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted.

**SECTION 6. AMENDMENT.** Section 16.1-07-12 of the North Dakota Century Code is amended and reenacted as follows:

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

shall mark across the face thereof "rejected as defective" or "rejected as not an elector", as the case may be. These rejected ballots are then turned over to the county canvassing board for final determination of eligibility. The subsequent death of an absentee voter after having voted by absentee ballot does not constitute grounds for rejecting such ballot.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2336.

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| Senate Vote: | Yeas | 46 | Nays | 0 | Absent | 1 |
| House Vote: | Yeas | 92 | Nays | 0 | Absent | 2 |

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State