



2021 South Dakota Legislature

Senate Bill 176

SENATE JUDICIARY ENGROSSED

Introduced by: **Senator Johns**

1 **An Act to adopt the Uniform Faithful Presidential Electors Act.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That a NEW SECTION be added:

4 **12-24A-1. Short Title.**

5 This chapter may be cited as the Uniform Faithful Presidential Electors Act.

6 **Section 2.** That a NEW SECTION be added:

7 **12-24A-2. Definitions.**

8 Terms used in this chapter mean:

9 (1) "Cast," accepted by the secretary of state in accordance with § 12-24A-7;

10 (2) "Elector," an individual selected as a presidential elector under § 12-16-6 and this
 11 chapter;

12 (3) "President," President of the United States;

13 (4) "Vice President," Vice President of the United States.

14 **Section 3.** That a NEW SECTION be added:

15 **12-24A-3. Electors--Designation.**

16 For each elector position in this state, a political party contesting the position, shall
 17 submit to the secretary of state the names of two qualified individuals. One of the
 18 individuals must be designated "elector nominee" "alternate elector nominee". Except as
 19 otherwise provided in §§ 12-24A-5 through 12-24A-8, this state's electors are the winning
 20 elector nominees under the laws of this state.

21 **Section 4.** That a NEW SECTION be added:

1 **12-24A-4. Electors--Pledge.**

2 Each elector nominee and alternate elector nominee of a political party shall
3 execute the following pledge: "If selected for the position of elector, I agree to serve and
4 to mark my ballots for President and Vice President for the nominees for those offices of
5 the party that nominated me." The executed pledges must accompany the submission of
6 the corresponding names to the secretary of state.

7 **Section 5.** That a NEW SECTION be added:

8 **12-24A-5. Certification of electors.**

9 In submitting this state's certificate of ascertainment as required by 3 U.S.C. § 6,
10 the Governor shall certify this state's electors and state in the certificate that:

- 11 (1) The electors will serve as electors unless a vacancy occurs in the office of elector
12 before the end of the meeting at which elector votes are cast, in which case a
13 substitute elector will fill the vacancy; and
14 (2) If a substitute elector is appointed to fill a vacancy, the Governor will submit an
15 amended certificate of ascertainment stating the names on the final list of this
16 state's electors.

17 **Section 6.** That a NEW SECTION be added:

18 **12-24A-6. Presiding officer--Elector vacancy.**

- 19 (1) The secretary of state shall preside at the meeting of electors described in § 12-
20 24A-7;
21 (2) The position of an elector not present to vote is vacant. The secretary of state shall
22 appoint an individual as a substitute elector to fill a vacancy as follows:
23 (a) If the alternate elector is present to vote, by appointing the alternate elector
24 for the vacant position;
25 (b) If the alternate elector for the vacant position is not present to vote, by
26 appointing an elector chosen by lot from among the alternate electors
27 present to vote who were nominated by the same political party;
28 (c) If the number of alternate electors present to vote is insufficient to fill any
29 vacant position pursuant to subsections (a) and (b), by appointing any
30 immediately available individual who is qualified to serve as an elector and
31 chosen through nomination by and plurality vote of the remaining electors,
32 including nomination and vote by a single elector if only one remains;

1 (d) If there is a tie between at least two nominees for substitute elector in a
2 vote conducted under subsection (c), by appointing an elector chosen by
3 lot from among those nominees; or

4 (e) If all elector positions are vacant and cannot be filled pursuant to
5 subsections (a) through (d), by appointing a single presidential elector, with
6 remaining vacant positions to be filled under subsection (c) and, if
7 necessary, subsection (d);

8 (3) To qualify as a substitute elector under subdivision (2), an individual who has not
9 executed the pledge required under § 12-24A-4 shall execute the following pledge:
10 "I agree to serve and to mark my ballots for President and Vice President consistent
11 with the pledge of the individual to whose elector position I have succeeded.".

12 **Section 7.** That a NEW SECTION be added:

13 **12-24A-7. Elector voting.**

14 (1) At the time designated for elector voting and after all vacant positions have been
15 filled under § 12-24A-6, the secretary of state shall provide each elector with a
16 presidential and a vice-presidential ballot. The elector shall mark the elector's
17 presidential and vice-presidential ballots with the elector's votes for the offices of
18 President and Vice President, respectively, along with the elector's signature and
19 the elector's legibly printed name;

20 (2) Except as otherwise provided by law of this state other than this chapter, each
21 elector shall present both completed ballots to the secretary of state, who shall
22 examine the ballots and accept as cast all ballots of electors whose votes are
23 consistent with their pledges executed under § 12-24A-4 or subdivision 12-24A-
24 6(3). Except as otherwise provided by law of this state other than this chapter, the
25 secretary of state may not accept and may not count either an elector's presidential
26 or vice-presidential ballot if the elector has not marked both ballots or has marked
27 a ballot in violation of the elector's pledge;

28 (3) An elector who refuses to present a ballot, presents an unmarked ballot, or
29 presents a ballot marked in violation of the elector's pledge executed under § 12-
30 24A-4 or subdivision 12-24A-6(3), vacates the office of elector, creating a vacant
31 position to be filled under § 12-24A-6;

32 (4) The secretary of state shall distribute ballots to and collect ballots from a substitute
33 elector and repeat the process under this section of examining ballots, declaring
34 and filling vacant positions as required, and recording appropriately completed

1 ballots from the substituted electors, until all of this state's electoral votes have
 2 been cast and recorded.

3 **Section 8.** That a NEW SECTION be added:

4 **12-24A-8. Elector replacement--Associated certificates.**

5 (1) After the vote of this state's electors is completed, if the final list of electors differs
 6 from any list that the Governor previously included on a certificate of ascertainment
 7 prepared and transmitted under 3 U.S.C. § 6, the secretary of state immediately
 8 shall prepare an amended certificate of ascertainment and transmit it to the
 9 Governor for the Governor's signature;

10 (2) The Governor immediately shall deliver the signed amended certificate of
 11 ascertainment to the secretary of state and a signed duplicate original of the
 12 amended certificate of ascertainment to all individuals entitled to receive this
 13 state's certificate of ascertainment, indicating that the amended certificate of
 14 ascertainment is to be substituted for the certificate of ascertainment previously
 15 submitted;

16 (3) The secretary of state shall prepare a certificate of vote. The electors on the final
 17 list shall sign the certificate. The secretary of state shall process and transmit the
 18 signed certificate with the amended certificate of ascertainment under 3 U.S.C. §§
 19 9, 10, and 11.

20 **Section 9.** That a NEW SECTION be added:

21 **12-24A-9. Uniformity of application and construction.**

22 In applying and construing this uniform act, consideration must be given to the
 23 need to promote uniformity of the law with respect to its subject matter among states
 24 that enact it.

25 **Section 10.** That § 12-24-1 be AMENDED.

26 **12-24-1. Elector's notice to Governor of readiness to perform duties--**
 27 **Certificate of names presented to electors.**

28 Each elector of President and vice president of the United States shall, before ~~the~~
 29 ~~hour of eleven o'clock in the morning~~ noon of the day fixed by the act of Congress to elect
 30 a President and vice president, give notice to the Governor that he is at the seat of
 31 government and ready at the proper time to perform the duties of an elector; and the

1 Governor shall forthwith deliver to the electors present a certificate of all the names of the
2 electors.

3 **Section 11.** That § 12-24-2 be AMENDED.

4 **12-24-2. Replacement of elector failing to appear.**

5 If any elector named in the Governor's certificate fails to appear before ~~nine o'clock~~
6 ~~in the morning~~ noon of the day of election of President and vice president as aforesaid,
7 the electors there present shall ~~immediately proceed to elect by ballot, in the presence of~~
8 ~~the Governor, a person to fill such vacancy~~ as provided under § 12-24A-6. ~~If more than~~
9 ~~one person voted for to fill such vacancy shall have the highest and an equal number of~~
10 ~~votes, the Governor, in the presence of the electors attending, shall decide by lot which~~
11 ~~of such persons shall be elected.~~

12 **Section 12.** That § 12-24-3 be REPEALED.

13 **12-24-3. Notice to and powers of elector chosen to fill vacancy.**