Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2120

Introduced by

Government and Veterans Affairs Committee

(At the request of the Commission on Uniform State Laws)

A BILL for an Act to create and enact sixteen new sections to chapter 16.1-07 of the North Dakota Century Code, relating to the adoption of the Uniform Military and Overseas Voters Act; to amend and reenact sections 16.1-07-01 and 16.1-07-05 of the North Dakota Century Code, relating to absentee voting; and to repeal sections 16.1-07-03 and 16.1-07-08.1 of the North Dakota Century Code, relating to absent voter ballots.

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.~~ ~~A citizen of the United States who is eighteen years of age or older, 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.~~ ~~(1) Does not maintain a domicile;~~

~~b.~~ ~~(2) Is not registered to vote in any other state, territory, or possession of the United States;~~

~~c.~~ ~~(3) Is not voting in any other state, territory, or possession of the United States; and~~

~~d. (4) 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~~

~~b. An elector described under subdivision a 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 personal delivery, facsimile, electronic mail or otherwise, for an official ballot to be voted at that election. A voter may obtain an application form approved by the secretary of state, for an absent voter's ballot for a general, special, primary, ~~or~~ county, city, or school election from ~~either~~ the secretary of state, a county ~~auditor~~ or ~~a~~ city auditor, a candidate, a political party, or a political committee. The application form 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 uniformed service members who are qualified electors and stationed at a location other than that individual's voting residential address 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 qualified elector living outside the United States may 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~~individuals prevented from voting in person on the day of the election due to an emergency. ~~A person~~An individual 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~~individual. The absentee ballot must be returned to the county auditor's office by four p.m. on the day of the election.

~~6.~~3. 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. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Definitions.

In sections 3 through 18 of this Act:

1. "Covered voter" means:
   a. A uniformed-service voter whose voting residence is in this state;
   b. An overseas voter who, before leaving the United States, was last eligible to vote in this state and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements;
   c. An overseas voter who, before leaving the United States, would have been last eligible to vote in this state had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements; or
   d. Any other overseas voter who was born outside the United States and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements, if:
      (1) The last place where a parent or legal guardian of the voter was, or under this Act would have been, eligible to vote before leaving the United States is within this state; and
      (2) The voter has not previously registered to vote or voted in any other state.
2. "Dependent" means an individual recognized as a dependent by the applicable uniformed service.
3. "Military-overseas ballot" means:
   a. A federal write-in absentee ballot described in the Uniformed and Overseas Citizens Absentee Voting Act [103, 42 U.S.C. 1973ff-2];
   b. A ballot specifically prepared or distributed for use by a covered voter in accordance with sections 4 through 18 of this Act; or
   c. A ballot cast by a covered voter in accordance with sections 4 through 18 of this Act.
4. "Overseas voter" means a United States citizen who is outside the United States.

5. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

6. "Uniformed service" means:

   a. Active and reserve components of the army, navy, air force, marine corps, and coast guard of the United States;

   b. The merchant marine, the commissioned corps of the public health service, and the commissioned corps of the national oceanic and atmospheric administration of the United States; and

   c. The national guard and state militia units.

7. "Uniformed-service voter" means an individual who is qualified to vote and is:

   a. A member of the active or reserve components of the army, navy, air force, marine corps, or coast guard of the United States who is on active duty;

   b. A member of the merchant marine, the commissioned corps of the public health service, or the commissioned corps of the national oceanic and atmospheric administration of the United States;

   c. A member of the national guard or state militia unit who is on activated status; or

   d. A spouse or dependent of a member referred to in this subsection.

SECTION 4. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Elections covered.

The voting procedures in sections 3 through 18 of this Act apply to:

1. A general, special, or primary election for federal office.

2. A general, special, or primary election for statewide or state legislative office or state ballot measure.

3. A general, special, or primary election for political subdivision office or political subdivision ballot measure.

SECTION 5. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Role of secretary of state.

1. The secretary of state is responsible for implementing sections 3 through 18 of this Act and the state's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff et seq.].
2. The secretary of state shall make available to covered voters information regarding procedures for casting military-overseas ballots.
3. The secretary of state shall establish an electronic transmission system through which covered voters may apply for and receive documents and other information under sections 3 through 18 of this Act.
4. The secretary of state shall develop standardized absentee-voting materials, including privacy and transmission envelopes and electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in this state and, to the extent reasonably possible, shall do so in coordination with other states.
5. The secretary of state shall prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of an overseas-military ballot. The declaration must be based on the declaration prescribed to accompany a federal write-in absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act [103, 42 U.S.C. 1973ff-2], as modified to be consistent with sections 3 through 18 of this Act. The secretary of state shall ensure that a form for the execution of the declaration, including an indication of the date of execution of the declaration, is a prominent part of all balloting materials for which the declaration is required.

SECTION 6. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Methods of applying for military-overseas ballot.

1. A covered voter may apply for a military-overseas ballot using either the absentee ballot application under this chapter or the federal postcard application, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act

[42 U.S.C. 1973ff(b)(2)] or the application's electronic equivalent if approved under guidelines established by the secretary of state.

2. The secretary of state shall ensure that the electronic transmission system described in section 5 of this Act is capable of accepting the submission of both a federal postcard application and any other approved electronic military-overseas ballot application sent to the appropriate election official. The voter may use the electronic transmission system or any other method approved under guidelines established by the secretary of state to apply for a military-overseas ballot.

3. A covered voter may use the declaration accompanying the federal write-in absentee ballot, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff-2] as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by midnight on the day before the election.

4. To receive the benefits of sections 3 through 18 of this Act, a covered voter must inform the appropriate election official that the voter is a covered voter. Methods of informing the appropriate election official that a voter is a covered voter include:

   a. The use of a federal postcard application or federal write-in absentee ballot;

   b. The use of an overseas address on a ballot application; and

   c. The inclusion on a ballot application of other information sufficient to identify the voter as a covered voter.

SECTION 7. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Timeliness and scope of application for military-overseas ballot.

An application for a military-overseas ballot is timely if received by the appropriate election official before the close of business on the day before the election. An application for a military-overseas ballot for a primary election, whether or not timely, is effective as an application for a military-overseas ballot for the general election.

SECTION 8. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Transmission of unvoted ballots.

1. For all covered elections for which this state has not received a waiver under the Military and Overseas Voter Empowerment Act [42 U.S.C. 1973ff-1(g)(2)] not later than forty-five days before the election or, if the forty-fifth day before the election is a weekend or holiday, not later than the business day preceding the forty-fifth day, the appropriate election official shall transmit ballots and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application.
2. A covered voter who requests a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission, electronic mail, or other electronic delivery approved by the secretary of state. The election official charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.
3. If a ballot application from a covered voter arrives after the election official begins transmitting ballots and balloting materials to voters, the official shall transmit them to the voter not later than two business days after the application arrives.

SECTION 9. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Timely casting of ballot.

To be valid, a military-overseas ballot must be submitted for mailing or other authorized means of delivery not later than 11:59 p.m. on the day before the election at the place where the voter completes the ballot. A military-overseas ballot must be received by the appropriate election official before the canvassing board meeting.

SECTION 10. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Federal write-in absentee ballot.

A covered voter may use the federal write-in absentee ballot, in accordance with the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff-2], to vote for all offices and ballot measures in a covered election.

SECTION 11. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Receipt of voted ballot.

1. A valid military-overseas ballot cast in accordance with section 9 of this Act must be counted if it is delivered before the canvassing board meets to canvas the returns.
2. If, at the time of completing a military-overseas ballot and balloting materials, the voter has affirmed under penalty of perjury under section 12 of this Act that the ballot was timely submitted, the ballot may not be rejected on the basis that it has a late postmark, an unreadable postmark, or no postmark.

SECTION 12. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Declaration.

Each military-overseas ballot must include or be accompanied by a declaration signed by the voter declaring that a material misstatement of fact in completing the document may be grounds for a conviction of perjury under the laws of the United States or this state.

SECTION 13. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Confirmation of receipt of application and voted ballot.

The secretary of state, in coordination with local election officials, shall implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or internet access whether:

1. The voter's military-overseas ballot application has been received and accepted; and
2. The voter's military-overseas ballot has been received and the current status of the ballot.

SECTION 14. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Use of voter's electronic mail address.

1. A covered voter who provides an electronic mail address to a local election official may request that the voter's application for a military-overseas ballot be considered a standing request for electronic delivery of a ballot for all elections held through December thirty-first of the year following the calendar year of the date of the application or another shorter period the voter specifies. An election official shall provide a military-overseas ballot to a voter who makes a request for each election to

which the request is applicable. A covered voter entitled to receive a military-overseas ballot for a primary election under this subsection also is entitled to receive a military-overseas ballot for the general election.

2. An electronic mail address provided by a covered voter is a confidential record. An election official may use the address only to communicate with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission, and verifying the voter's mailing address and physical location, as needed.

SECTION 15. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Publication of election notice.

1. Not later than one hundred days before a regularly scheduled election to which sections 3 through 18 of this Act apply, and as soon as practicable in the case of a special election, the secretary of state and each local election official charged with printing and distributing ballots and balloting materials for that election shall prepare an election notice, to be used in conjunction with the federal write-in absentee ballot described in section 10 of this Act. The election notice must contain a list of all of the ballot measures and federal, state, and local offices that as of that date the secretary of state and the local election official expect to be on the ballot on the date of the election. The notice also must contain specific instructions for how a voter is to indicate on the federal write-in absentee ballot the voter's choice for each office to be filled and for each ballot measure to be contested.

2. A covered voter may request a copy of an election notice. The officials charged with preparing the election notice shall send the notice to the voter by facsimile, electronic mail, or regular mail, as the voter requests if the voter is not able to obtain that same notice from the secretary of state's website.

3. At least fifty-five days before an election, the officials charged with preparing the election notice shall update the notice with the certified candidates for each office and ballot measure questions and make the updated notice publicly available.

4. A local election official who maintains an internet website shall make updated versions of its election notices regularly available on the website.

SECTION 16. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Prohibition of nonessential requirements.

1. If a voter's mistake or omission in the completion of a document under sections 3 through 18 of this Act does not prevent determining whether a covered voter is eligible to vote, the mistake or omission does not invalidate the document. Failure to satisfy a nonessential requirement, such as using paper or envelopes of a specified size or weight, does not invalidate a document submitted under this chapter. In any write-in ballot authorized by law, if the intention of the voter is discernable, as provided under the Help America Vote Act [42 U.S.C. 15481(a)(6)], an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party must be accepted as a valid vote.
2. Notarization is not required for the execution of a document under sections 3 through 18 of this Act. An authentication, other than the declaration specified in section 12 of this Act or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for execution of a document under sections 3 through 18 of this Act. The declaration and any information in the declaration may be compared against information on file to ascertain the validity of the document.

SECTION 17. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Issuance of injunction or other equitable relief.

A court may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with, or enforce, sections 3 through 18 of this Act on application by:

1. A covered voter alleging a grievance under sections 3 through 18 of this Act; or
2. An election official in this state.

SECTION 18. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Relation to Electronic Signatures in Global and National Commerce Act.

Sections 3 through 18 of this Act modify, limit, and supersede the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but do not modify, limit, or

1 supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorized electronic delivery of any
2 of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].
3 **SECTION 19. REPEAL.** Sections 16.1-07-03 and 16.1-07-08.1 of the North Dakota Century
4 Code are repealed.