

D R A F T

FOR DISCUSSION ONLY

# **FAITHFUL PRESIDENTIAL ELECTORS ACT**

---

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

---

*Without Prefatory Note and with Comments*

For December 4 – 5, 2009 Committee Meeting

Copyright ©2009  
By  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

---

*The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.*

November 17, 2009

## **DRAFTING COMMITTEE ON FAITHFUL PRESIDENTIAL ELECTORS ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

SUSAN KELLY NICHOLS, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629, *Chair*

JAMES BOPP, JR., 1 South 6th St., Terre Haute, IN 47807

JAMES M. BUSH, 3003 N. Central Ave., Suite 2600, Phoenix, AZ 85012

RICHARD A. CHAMPAGNE, Legislative Reference Bureau, One East Main St., Suite 200, Madison, WI 53701-2037

JESS O. HALE, JR., Office of Legal Services, G-16 War Memorial Bldg., Nashville, TN 37243-0059

GENE N. LEBRUN, P.O. Box 8250, 909 St. Joseph St., Suite 900, Rapid City, SD 57709

LANE SHETTERLY, 189 SW Academy St., P.O. Box 105, Dallas, OR 97338

LARRY L. RUTH, 530 S. 13<sup>th</sup> St., Suite 110, Lincoln, NE 68508-2820

J. SAMUEL TENENBAUM, Northwestern University School of Law, 357 E. Chicago Ave., Chicago, IL 60611

TERESA ANN TILLER, House Legislative Services Office, P.O. Box 1018, Jackson, MS 39215-1018

CAM WARD, 124 Newgate Rd., Alabaster, AL 35007

MICHAEL J. WILKINS, 450 S. State St., 5th Floor, P.O. Box 140210, Salt Lake City, UT 84114-0210

ROBERT BENNETT, Northwestern University School of Law, 357 E. Chicago Ave., Chicago, IL 60611, *Reporter*

## **EX OFFICIO**

ROBERT A. STEIN, University Of Minnesota Law School, 229 19th Avenue South, Minneapolis, MN 55455, *President*

JACK DAVIES, 1201 Yale Place, Unit #2004, Minneapolis, MN 55403-1961, *Division Chair*

## **AMERICAN BAR ASSOCIATION ADVISOR**

JOHN HARDIN YOUNG, 300 M St. SE, Suite 1102, Washington, DC 20006, *ABA Advisor*

## **EXECUTIVE DIRECTOR**

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
111 N. Wabash Ave., Suite 1010  
Chicago, Illinois 60602  
312/450-6600  
[www.nccusl.org](http://www.nccusl.org)

# **FAITHFUL PRESIDENTIAL ELECTORS ACT**

## **TABLE OF CONTENTS**

SECTION 1. SHORT TITLE. ....	1
SECTION 2. DEFINITIONS. ....	1
SECTION 3. DESIGNATION OF STATE’S ELECTORS. ....	1
SECTION 4. IDENTIFICATION OF ELECTORS. ....	3
SECTION 5. PRESIDING OFFICER; ELECTOR VACANCIES. ....	3
SECTION 6. ELECTOR VOTING. ....	4
SECTION 7. NOTIFICATION OF ELECTOR REPLACEMENTS AND HANDLING OF ASSOCIATED CERTIFICATES. ....	5
SECTION 8. DEATH OF PRESIDENTIAL OR VICE-PRESIDENTIAL CANDIDATE. ....	6
SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION. ....	7
SECTION 10. REPEALS. ....	7
SECTION 11. EFFECTIVE DATE. ....	7

1 **FAITHFUL PRESIDENTIAL ELECTORS ACT**

2  
3 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Faithful Presidential

4 Electors Act.

5 **SECTION 2. DEFINITIONS.** In this [act];

6 (1) “Elector” means an individual identified under [applicable state statute] and the  
7 procedures of this [act] as a presidential elector.

8 (2) “Faithful” elector means an elector who designates on the presidential and vice-  
9 presidential ballots provided to electors under Section 6 the presidential and vice-presidential  
10 candidates of the political party that nominated that elector or that nominated the elector whose  
11 position was filled by the designating elector. **{Our Style Liaison has suggested that this  
12 definition be removed because it “is used only in the title of the act, the short title, and the  
13 definition itself. In addition, the definition is substantively redundant because the act  
14 imposes no obligation on an elector to vote faithfully; instead, the act imposes an obligation  
15 on the Secretary of State to reject the ballot of any elector who does not vote faithfully.”  
16 The question of whether to keep it may be moot if the Committee chooses another of the  
17 suggested titles for the Act.}**

18 (3) “President” means the President of the United States.

19 (4) “Vice-President” means the Vice-President of the United States.

20 **SECTION 3. DESIGNATION OF STATE’S ELECTORS.** For each elector position  
21 in this state, a political party contesting the position shall submit to the [Secretary of State] the  
22 names of two qualified individuals. One of those individuals must be designated “elector  
23 nominee”, and the other “alternate elector nominee”. Each individual shall execute and sign the  
24 following pledge: “If selected for the position of elector, I agree to serve and to cast my ballots

1 for President and Vice-President for the nominees for those offices of the party that nominated  
2 me for the position of elector or alternate elector.”. The executed pledges must accompany the  
3 corresponding names submitted to the [Secretary of State]. Except as otherwise provided in  
4 Section 4, this state’s electors are the winning elector nominees under the laws of this state.

5 ***Legislative Note:** Most states do not at the present time provide for the initial selection of*  
6 *alternate electors. Two states that do are Minnesota and Hawaii, although even they do not*  
7 *designate an alternate for each elector position. This section uses the device of elected alternates*  
8 *as a convenient vehicle for facilitating the filling of elector vacancies, which is dealt with under*  
9 *Section 5. But alternates are not essential for the filling of vacancies, nor does the designation of*  
10 *alternates for each elector position absolutely guarantee that the alternates will suffice for the*  
11 *filling of all vacancies that conceivably might arise. For these reasons, a state might not employ*  
12 *the device of alternates, in which case adjustment of this section and of Sections 4 and 5 would*  
13 *be necessary.*

14  
15 *Adaptation of this section may also be required in Mississippi or other states where*  
16 *unpledged electors might be permissible.*

#### 17 18 **Comment**

19  
20 **{New Section 8 addresses the possibility of the death of a candidate for president or**  
21 **vice president before the electors vote. It is included for discussion in light of comments**  
22 **received at the 2009 Annual Meeting. This comment will be modified if necessary after the**  
23 **Committee decides whether to include a Section in the Act on the death of a candidate.}**

24  
25 The possible death or disability of presidential and vice-presidential candidates raises  
26 questions which the Act does not address. The candidates presumably become president and  
27 vice-president “elect” after the elector voting, assuming they receive the required majorities. The  
28 United States Constitution provides a mechanism for dealing with vacancies that arise after the  
29 president and vice-president elect have been chosen. See U.S. CONST. amend. XX, §§ 3 & 4.  
30 But aside from some state laws that deal with the subject, there is no clear guidance in the  
31 Constitution, federal statutes or case law about the effect of death or disability between election  
32 day and elector voting.

33  
34 Questions that might arise with respect to electors include whether an elector is impliedly  
35 released from a pledge taken under Section 3 on account of the death or disability of a candidate.  
36 If that were the appropriate interpretation, then further questions would be raised about whether  
37 elector discretion would then be appropriate or some mechanism would be supplied for  
38 providing substitute candidates. The Committee thought that difficult enactability problems  
39 could be presented by attempting to address the effect on electors of such death or disability of  
40 candidates between the general election and elector voting.

1           **SECTION 4. IDENTIFICATION OF ELECTORS.** In submitting this state's

2   certificate of ascertainment as required by 3 U.S.C. Section 6, the [Governor] shall certify both  
3   this state's electors and this state's alternate electors, and shall explicitly recite in the  
4   certificate that:

5           (1) the electors will serve as electors unless a vacancy occurs in the office of elector  
6   before the end of the meeting at which elector votes are cast, in which case, pursuant to state law,  
7   substitute electors will be chosen to fill those vacancies from among the alternate electors if  
8   possible; and

9           (2) if substitution of electors is required, the [Governor] will submit an amended  
10   certificate of ascertainment specifying the names of a complete set of the state's electors,  
11   including the replacement electors, who are entitled to cast this state's electoral votes.

12   ***Legislative Note:** The federal statute assigns duties to a state's "executive," and most state*  
13   *statutes that identify the officer employ the Governor to carry out those duties. States could*  
14   *presumably opt for a different executive officer, both in this Section and in Section 7.*  
15

16           **SECTION 5. PRESIDING OFFICER; ELECTOR VACANCIES.**

17           (a) The [Secretary of State] shall preside at the meeting of electors. If any elected elector  
18   is unable to be present, the position of the absent elector is deemed to be vacant. A vacancy that  
19   occurs for that or any other reason shall be filled with the assistance of the [Secretary of State] in  
20   the following manner:

21                   (1) by the alternate elector associated with the absent elector, if the alternate  
22   elector is present at the meeting;

23                   (2) if the associated alternate elector is not present at the meeting, by lot from  
24   among alternate electors nominated by the political party of the absent elector who are present at  
25   the meeting;

1 (3) if alternate electors present at the meeting are insufficient to fill any vacancies  
2 pursuant to paragraphs (1) and (2), by any immediately available individuals who are qualified to  
3 serve as electors, through a process of nomination by and a plurality vote of the remaining  
4 electors, including choice by a single elector if only one remains;

5 (4) if pursuant to paragraph (3) there is a tie among two or more candidates, by lot  
6 from among the candidates having the same plurality vote; and

7 (5) if all elector positions are vacant and cannot be filled pursuant to paragraphs  
8 (1) through (4), the [Secretary of State] shall designate a single presidential elector, with  
9 remaining vacancies filled under paragraph (3), and, if necessary, paragraph (4).

10 (b) To qualify as a substitute elector under subsection (a), an individual who has not  
11 previously executed and signed the pledge required under Section 3 must execute and sign the  
12 following pledge: "I agree to cast my ballots for presidential and vice-presidential candidates for  
13 the nominees for those offices of the party that nominated for the position of elector the  
14 individual to whose elector position I have succeeded."

15 ***Legislative Note:** Adjustment would be required for the unpledged elector possibility in*  
16 *Mississippi.*  
17

18 **SECTION 6. ELECTOR VOTING.** At the time designated for elector voting and after  
19 any vacancies have been filled under Section 5, the [Secretary of State] shall provide each elector  
20 with a presidential and a vice-presidential ballot. The elector shall mark the elector's presidential  
21 ballot and vice-presidential ballot with the elector's vote for the office of President and Vice-  
22 President, respectively, along with the elector's signature and the elector's legibly printed name.  
23 Each elector shall present both completed ballots to [the Secretary of State], who shall examine  
24 them and record as cast all ballots of electors who voted consistently with their pledges under

1 Section 3 or 5. The [Secretary of State] shall not cast and shall not count an elector's presidential  
2 or vice-presidential ballot if the elector has left either ballot blank or has marked either ballot in  
3 violation of the elector's pledge. An elector who presents a blank ballot or a ballot in violation of  
4 the pledge is deemed to have resigned from the office of elector, creating a vacancy to be filled  
5 as provided in Section 5. The [Secretary of State] shall then distribute to and collect ballots from  
6 properly substituted electors and repeat the process of examining ballots, declaring and filling  
7 vacancies as required, and casting and recording appropriately completed ballots from the  
8 substituted electors, until all of the state's electoral votes have been cast by electors who vote  
9 consistently with their pledges.

10 **SECTION 7. NOTIFICATION OF ELECTOR REPLACEMENTS AND**  
11 **HANDLING OF ASSOCIATED CERTIFICATES.** After the vote of this state's electors is  
12 completed, if the final list of electors differs from any list that the [Governor] has previously  
13 included on a certificate of ascertainment prepared and transmitted pursuant to 3 U.S.C. Section  
14 6, the [Secretary of State] shall immediately prepare an amended certificate of ascertainment  
15 containing the final list and transmit it to the [Governor] for the [Governor's] signature. The  
16 [Governor] shall expeditiously deliver the signed amended certificate of ascertainment to the  
17 [Secretary of State] and to all federal, state, and local officials entitled to receive this state's  
18 certificate of ascertainment, including the President of the United States Senate and each of this  
19 state's electors on the final list, indicating that the amended certificate of ascertainment is to be  
20 substituted for the certificate of ascertainment previously submitted. The [Secretary of State]  
21 shall prepare a certificate of vote for the electors on the final list to sign, process, and transmit  
22 along with the substituted certificate of ascertainment as provided in 3 U.S.C. Sections 9, 10, and  
23 11.



1 **Comment**

2 The Constitution imposes no impediment to a state's Secretary of State serving as an  
3 elector, and state statutes do not appear to preclude that possibility. If a state wanted to guard  
4 against that remote possibility, it could presumably do so explicitly. In addition, it is possible  
5 that the Secretary of State might call on other state officials to help in carrying out duties  
6 assigned under the Uniform Act. The power to do so can probably be presumed, but there would  
7 be no harm in a state making such a possibility explicit.  
8  
9

10 **SECTION 8. DEATH OF PRESIDENTIAL OR VICE-PRESIDENTIAL**

11 **CANDIDATE.**

12 (a) If the presidential candidate for whom an elector pledges to vote pursuant to Section 3  
13 or 5 dies before the elector votes pursuant to Section 6, the elector fulfills the pledge only if the  
14 elector marks the elector's presidential and vice-presidential ballots as follows:

15 (1) the presidential ballot for the vice-presidential candidate of the political party  
16 that nominated that elector or that nominated the elector to whose position the voting elector  
17 succeeded; and

18 (2) the vice-presidential ballot for the substitute vice-presidential candidate  
19 designated by that political party.

20 (b) If the vice-presidential candidate for whom an elector pledges to vote pursuant to  
21 Section 3 or 5 dies before the elector votes pursuant to Section 6, the elector fulfills the pledge  
22 only if the elector marks the elector's presidential and vice-presidential ballots as follows:

23 (1) the presidential ballot for the presidential candidate described in the elector's  
24 pledge pursuant to Section 3 or 5; and

25 (2) the substitute vice-presidential candidate designated by the political party that  
26 nominated that elector or, if the elector filled a vacancy under Section 5, the political party that  
27 nominated the elector to whose position the voting elector succeeded.

1 (c) If both the presidential and vice-presidential candidates for whom an elector pledges  
2 to vote pursuant to Section 3 or 5 die before the elector votes pursuant to Section 6, the elector  
3 fulfills the pledge only if the elector marks the elector's presidential and vice-presidential ballots  
4 respectively for the substitute presidential and vice-presidential candidates designated by the  
5 political party that nominated that elector or, if the elector filled a vacancy under Section 5, the  
6 political party that nominated the elector to whose position the voting elector succeeded.

7 **SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
8 applying and construing this uniform act, consideration must be given to the need to promote  
9 uniformity of the law with respect to its subject matter among states that enact it.

10 **SECTION 10. REPEALS.** The following are repealed:\_\_\_\_\_.

11 **SECTION 11. EFFECTIVE DATE.** This [act] takes effect. . . .