

DRAFT  
FOR DISCUSSION ONLY

# **PRESIDENTIAL ELECTORS ACT**

---

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

---

Draft for March 2009 Committee Meeting  
VERSION 1

*WITHOUT PREFATORY NOTE OR COMMENTS*

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. 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.*

March 12, 2009

## **DRAFTING COMMITTEE ON 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

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**

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563, *President*

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

### **AMERICAN BAR ASSOCIATION ADVISOR**

JOHN HARDIN YOUNG, 50 E. Street, SE, Suite 300, Washington, DC 20003, *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)

# **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. NOTIFICATION OF ELECTOR REPLACEMENT POSSIBILITY .....	2
SECTION 5. PRESIDING OFFICER AND FILLING VACANCIES AT ELECTOR MEETING.....	2
SECTION 6. NOTIFICATION OF ELECTOR REPLACEMENTS .....	3
SECTION 7. DEATH OF WINNING PRESIDENTIAL OR VICE-PRESIDENTIAL CANDIDATES BEFORE ELECTOR MEETING.....	4
SECTION 8. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	4
SECTION 9. REPEALS .....	5
SECTION 10. EFFECTIVE DATE.....	5

1                                   **PRESIDENTIAL ELECTORS ACT**

2

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

4           **SECTION 2. DEFINITIONS.** In this [act]:

5           (1) “President” means the President of the United States.

6           (2) “Vice-President” means the Vice-President of the United States.

7           (3) “Winning presidential candidate” means the candidate for President for whom a  
8 qualified slate of presidential electors is properly submitted, whose name appears as a candidate  
9 for President on the general election ballots in this state, and who receives the greatest number of  
10 qualified votes in this state for that office.

11          (4) “Winning vice-presidential candidate” means the candidate for Vice-President, whose  
12 name appears on the general election ballots in this state as the vice-presidential running mate of  
13 the winning presidential candidate and who receives the greatest number of qualified votes in  
14 this state for the office of Vice President.<sup>1</sup>

15          **SECTION 3. DESIGNATION OF STATE’S ELECTORS.** Each certificate of  
16 nomination of candidates for President and for Vice-President must be accompanied by a list of  
17 qualified persons equal to the number of presidential electors to which this state is entitled under  
18 the United States Constitution. Except as provided in Section 4, the persons on the list submitted  
19 by the party of the winning presidential and vice-presidential candidates, or the list submitted by

---

<sup>1</sup> The two definitions would have to be adjusted where a state chooses some electors in district elections. Adjustment might also be required for the remote possibility that an unpledged slate of electors would prevail.

1 independent candidates for the two offices, are the state's presidential electors for purposes of  
2 casting this state's electoral votes for that election at the meeting convened for that purpose.<sup>2</sup>

#### 3 **SECTION 4. NOTIFICATION OF ELECTOR REPLACEMENT POSSIBILITY.**

4 In submitting this state's certificate of ascertainment as required by 3 U.S.C. Section 6, the  
5 Governor shall note the possibility that vacancies in the office of elector may occur before  
6 conclusion of the meeting at which elector voting is conducted, that state law provides for filling  
7 vacancies , and that, if vacancies occur, the Governor will transmit an amended certificate of  
8 ascertainment specifying the names of a complete set of the state's electors, including the  
9 replacement electors, who are entitled to cast the state's electoral votes.

#### 10 **SECTION 5. PRESIDING OFFICER AND FILLING VACANCIES AT** 11 **ELECTOR MEETING.**

12 (a) The [Secretary of State] shall preside at the meeting of electors. If any electors are  
13 unable to be present, the positions of the absent electors are deemed to be vacant and with the  
14 assistance of the [Secretary of State] the vacancies shall be filled at the meeting of electors in the  
15 following manner:

16 (1) By a plurality vote of the remaining electors, including choice by the single  
17 elector if only one remains.

18 (2) If no single substitute elector receives a plurality vote, but there is a tie among  
19 two or more candidates each with the same plurality, by a coin flip or drawing of straws  
20 conducted by the [Secretary of State].

---

<sup>2</sup> Again, adjustment will be necessary where some electors are chosen in districts. And further adjustment might be necessary for a state that provides for the possibility of unpledged slates of electors.

1 (3) If all elector positions are vacant, by designation of a single elector by the  
2 [Secretary of State], with remaining vacancies filled under paragraph (1) and, if necessary,  
3 paragraph (2).

4 (b) Except as provided in Section 6, electors shall cast their presidential and vice-  
5 presidential votes respectively for the winning presidential candidate and for the winning vice-  
6 presidential candidate. When a full set of electors has been assembled, the [Secretary of State]  
7 shall poll them for their votes for President and Vice-President respectively, and shall record  
8 their votes as cast for the winning presidential candidate and the winning vice-presidential  
9 candidate respectively, thus fulfilling their obligations under this section.<sup>3</sup>

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

---

<sup>3</sup> Again, adjustment might be required to take account of the possibility of a winning slate of unpledged electors.

1 substituted certificate of ascertainment and their transmission cannot be accomplished before the  
2 meeting of electors is adjourned, the electors shall entrust those tasks to the [Secretary of State],  
3 who shall perform them as expeditiously as possible.

4       **SECTION 7. DEATH OF WINNING PRESIDENTIAL OR VICE-**  
5 **PRESIDENTIAL CANDIDATES BEFORE ELECTOR MEETING.** If before the meeting  
6 of electors, the winning presidential candidate dies, the political party that nominated the  
7 winning slate of electors<sup>4</sup> shall notify the [Secretary of State] that the winning vice-presidential  
8 candidate is to be substituted as its candidate for President, and it shall further inform the  
9 [Secretary of State] of a substitute candidate it has selected for Vice-President. If before the  
10 meeting of electors, the winning vice-presidential candidate dies, the political party shall notify  
11 the [Secretary of State] of a substitute candidate it has selected for Vice-President. If before the  
12 meeting of electors both the winning presidential candidate and the winning vice-presidential  
13 candidate die, the political party shall notify the [Secretary of State] of substitute candidates it  
14 has selected for both offices. In the case of any such substitution or substitutions, electors shall  
15 cast their votes for the substituted candidate or candidates at the meeting. After any required  
16 substitution have been made, and a full set of electors has been assembled, the [Secretary of  
17 State] shall poll the electors for their votes for any offices for which substitution has taken place  
18 and shall record their votes as cast for the substituted candidate or candidates, thus fulfilling their  
19 obligations under this section.

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

---

<sup>4</sup> Again adjustment will be required for states where some electors are chosen in district-wide elections. No adjustment would presumably be required for a victorious unpledged slate.

1        **SECTION 9. REPEALS.** The following are repealed: \_\_\_\_\_.

2        **SECTION 10. EFFECTIVE DATE.** This [act] takes effect: