

DRAFT
FOR DISCUSSION ONLY

PRESIDENTIAL ELECTORS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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WITHOUT PREFATORY NOTE OR COMMENTS

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March 12, 2009

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PRESIDENTIAL ELECTORS ACT

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

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

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

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

16 **SECTION 3. DESIGNATION OF STATE’S ELECTORS.** Each certificate of
17 nomination of candidates for President and for Vice-President must be accompanied by a list of
18 qualified persons equal to the number of presidential electors to which this state is entitled under
19 the United States Constitution. Except as provided in Section 4, the persons on the list submitted
20 by the party of the winning presidential candidate and winning vice-presidential candidate, or the
21 list submitted by any independent candidates for the two offices, are this state’s presidential
22 electors for purposes of casting this state’s electoral votes for that election at the meeting

¹ 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 convened for that purpose.² Each person listed shall execute the following pledge, which shall
2 be attached to the certificate when it is filed with the [Secretary of State]: “I agree to serve as
3 presidential elector, if elected to that position, and if elected, I affirm that I will cast my ballots
4 as elector for the winning presidential candidate for President and for the winning vice-
5 presidential candidate for Vice President.

6 **SECTION 4. NOTIFICATION OF ELECTOR REPLACEMENT POSSIBILITY.**

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

13 **SECTION 5. PRESIDING OFFICER AND FILLING VACANCIES AT**
14 **ELECTOR MEETING.**

15 (a) The [Secretary of State] shall preside at the meeting of electors. If any electors are
16 unable to be present, the positions of absent electors are deemed to be vacant and with the
17 assistance of the [Secretary of State] the vacancies shall be filled provided in this section. To
18 qualify as a substitute elector, a person must execute the following pledge: “I agree to serve as
19 presidential elector, and I affirm that I will cast my ballots at for the winning presidential

² 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 candidate for President and for the winning vice-presidential candidate for Vice President.³
2 Except as provided in Section 6, when a complete set of the state’s presidential electors is
3 assembled, the [Secretary of State] shall call out their names one at a time and ask each the
4 following question: “May I record your votes for President and Vice-President in accordance
5 with the pledge that you have previously submitted?” With each positive response to that
6 question, the [Secretary of State] shall record presidential and vice-presidential votes for the
7 winning presidential candidate and for the winning vice-presidential candidate, respectively. An
8 elector who gives a negative answer to that question resigns from the office of elector, creating a
9 vacancy to be filled by substitute electors as provided in this section. The [Secretary of State]
10 shall ask the designated question of any substitute electors until a complete set of the state’s
11 electors has been asked the question and responded affirmatively.

12 (b) Each vacancy in the office of presidential elector shall be filled at the meeting of
13 electors in the following manner:

14 (1) By a plurality vote of the remaining electors, including the single elector if
15 only one remains.

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

19 (3) If all elector positions are vacant, by designation of a single elector by the
20 [Secretary of State], with remaining vacancies filled paragraph (1), and, if necessary, paragraph
21 (2).

22 **SECTION 6. NOTIFICATION OF ELECTOR REPLACEMENTS.** After the vote

³ Adjustments would again be required for the districting possibility, and if thought necessary for the unpledged electors possibility.

1 of the state’s presidential electors is completed, if the final list of electors differs from any list
2 that the Governor has previously included on a certificate of ascertainment prepared and
3 transmitted pursuant to 3 U.S.C. Section 6, the [Secretary of State] shall immediately prepare a
4 substitute certificate of ascertainment containing the final list and transmit it to the Governor for
5 the Governor’s signature. The Governor shall expeditiously deliver the signed substitute
6 certificate of ascertainment to the [Secretary of State] and to all state and local officials entitled
7 to receive this state’s certificate of ascertainment, including the President of the United States
8 Senate and each of this state’s electors on the final list, indicating that this certificate of
9 ascertainment is to be substituted for the certificate of ascertainment previously submitted. The
10 [Secretary of State] shall prepare for the electors on the substituted list a certificate of vote for
11 them to sign, handle, and transmit along with the substituted certificate of ascertainment pursuant
12 to 3 U.S.C. Sections 9, 10, and 11. If the association of the signed certificate of vote with the
13 substituted certificate of ascertainment and their transmission cannot be accomplished before the
14 meeting of electors is adjourned, the electors shall entrust those tasks to the [Secretary of State],
15 who shall perform them as expeditiously as possible.

16 **SECTION 7. DEATH OF WINNING PRESIDENTIAL OR VICE-**
17 **PRESIDENTIAL CANDIDATES BEFORE ELECTOR MEETING.**

18 (a) If before the meeting of electors, the winning presidential candidate dies, the political
19 party that nominated the winning slate of electors⁴ shall notify the [Secretary of State] that the
20 winning vice-presidential candidate is to be substituted as its candidate for President, and it shall
21 further inform the [Secretary of State] of a substitute candidate it has selected for Vice-President.
22 If before the meeting of electors, the winning vice-presidential candidate dies, the political party

⁴ 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 shall notify the [Secretary of State] of a substitute candidate it has selected for Vice-President. If
2 before the meeting of electors both the winning presidential candidate and the winning vice-
3 presidential candidate die, the political party shall notify the [Secretary of State] of substitute
4 candidates it has selected for both offices.

5 (b) In the case of a substitution or substitutions under subsection (a), at the meeting of
6 electors the [Secretary of State] shall inform the electors that they are released from their pledge
7 to vote for the winning candidate or candidates for whom a substitution has been made and shall
8 administer to each elector the following pledge: “I affirm that I will cast my presidential ballot at
9 this meeting for the properly substituted political party candidate for President and the properly
10 substituted political party candidate for Vice-President.” The [Secretary of State] shall poll the
11 electors as provided in Section 5 except that the question put to the electors must be the
12 following: “May I record your votes for President and Vice-President in accordance with the
13 pledge that you have most recently taken at this meeting?” A negative answer to that question
14 constitutes resignation from the office of elector, and any vacancy created in that or any other
15 way shall be filled as provided in Section 5. The [Secretary of State] shall ask the designated
16 question of any substitute electors until a complete set of this state’s electors has been asked the
17 question and responded affirmatively.

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

21 **SECTION 9. REPEALS.** The following are repealed: _____.

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