



## 2021 South Dakota Legislature

# Senate Bill 176

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 § 12-24-2 be AMENDED.

26 **12-24-2. Replacement of elector failing to appear.**

27 If any elector named in the Governor's certificate fails to appear before nine o'clock  
28 in the morning of the day of election of President and vice president as aforesaid, the  
29 electors there present shall ~~immediately proceed to elect by ballot, in the presence of the~~  
30 Governor, a person to fill such vacancy as provided under § 12-24A-6. ~~If more than one~~  
31 ~~person voted for to fill such vacancy shall have the highest and an equal number of votes,~~

1       the Governor, ~~in the presence of the electors attending, shall decide by lot which of such~~  
2       persons shall be elected.

3       **Section 11.** That § 12-24-3 be REPEALED.

4               **12-24-3. Notice to and powers of elector chosen to fill vacancy.**