



SPONSOR: Sen. Gay & Rep. Baumbach
Sens. Hoffner, Huxtable, S. McBride, Sokola, Sturgeon;
Reps. Lambert, Lynn, Romer, Schwartzkopf

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 57

AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO PRESIDENTIAL ELECTORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 43, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 43. Presidential ~~Electors~~, Electors; United States ~~Senators~~, Senators; Representatives in ~~Congress~~,
~~Governor and Lieutenant Governor~~. Congress.

Subchapter I. Election and meeting of presidential electors; United States Senators; Representatives in Congress.

§ 4301. Presidential electors; Election.

Electors of a President and Vice-President of the United States ~~shall~~ must be chosen at the general election held in the year of a presidential election. The election of ~~such~~ the electors ~~shall~~ must be conducted in the same places, ~~manner~~ manner, and form and by the same persons and officers, and under the same regulations in all respects, as the general election for the same year.

§ 4302. Proclamation of Number to be Chosen.

The Governor in October next preceding every election of presidential electors shall by proclamation make known the number of presidential electors to be chosen and the day of the election.

§ 4303. Meeting and Voting of Electors.

(a) The electors chosen or appointed in this State for the election of a President and Vice President of the United States shall meet and give their votes at Dover on the day determined by Congress for that purpose.

(b) In all cases, ~~the electors~~ an elector chosen or appointed in this State for the election of a President and Vice President of the United States under this chapter ~~shall be required to cast their individual votes~~ shall cast the elector's vote for the presidential and vice presidential nominees, or their legal successors, of the political party or unaffiliated presidential candidate that nominated the elector.

§ 4304. Substitute Electors.

~~In case of the death or inability to attend of either of the electors or if either of the electors be not present at the time and place of meeting by 12:00 noon, the electors present shall appoint an elector in the place of the elector not present.~~

[Repealed.]

§ 4305. Clerk of Electors; Compensation.

The electors may employ a clerk, who shall receive for that clerk's own services the sum of \$10.

§ 4306. Compensation of Electors and Clerk.

The electors respectively shall receive for attendance and travel the same compensation as members of the General Assembly, to be paid, as also the compensation of the clerk, by the State Treasurer on a warrant signed by the electors out of any money in the treasury not otherwise appropriated.

§ 4307. United States Senator.

A Senator from this State in the Senate of the United States shall be chosen by election at the general elections held in 1954 and in every sixth year thereafter and in 1958 and in every sixth year thereafter. The election of a United States Senator shall be conducted in the same places, manner and form and by the same persons and officers and under the same regulations in all respects as the general election for the same year.

§ 4308. Representative in Congress.

A Representative for the people of this State in the Congress of the United States shall be chosen at the biennial general election. The election of a Representative in Congress shall be conducted in the same places, manner and form and by the same persons and officers and under the same regulations in all respects, as the election for members of the General Assembly, and the votes given for Representative in Congress shall be calculated and ascertained at the same time and place, in the same manner and by and under the same means and regulations as those for members of the General Assembly.

§ 4309. Governor and Lieutenant Governor; Joint Election [Repealed].

Repealed by 61 Del. Laws, c. 480, § 9, effective July 11, 1978.

§ 4310. Qualifications of Voters.

All citizens of this State having the right to vote for representatives in the General Assembly are qualified to vote for presidential electors, United States Senator and Representative in Congress.

Section 2. Amend Chapter 43, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter II. Uniform Faithful Presidential Electors Act.

§ 4321. Short title.

This subchapter may be cited as the Uniform Faithful Presidential Electors Act.

§ 4322. Definitions.

For purposes of this chapter:

(1) “Cast” means accepted by the Secretary of State in accordance with § 4327(b) of this title.

(2) “Elector” means an individual selected as a presidential elector under this chapter.

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

(4) “Unaffiliated presidential candidate” means a candidate for President who qualifies for the general election ballot in this state by means other than nomination by a political party.

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

§ 4323. Designation of State’s electors.

For each elector position in this State, a political party contesting the position, or an unaffiliated presidential candidate, shall submit to the Secretary of State and State Election Commissioner the names of 2 qualified individuals. One of the individuals must be designated “elector nominee” and the other “alternate elector nominee”. Except as otherwise provided in § 4325 through § 4328 of this title, this State’s electors are the winning elector nominees under the laws of this State.

§ 4324. Pledge.

Each elector nominee and alternate elector nominee of a political party shall execute the following pledge: “If selected for the position of elector, I agree to serve and to mark my ballots for President and Vice President for the nominees for those offices of the party that nominated me.” Each elector nominee and alternate elector nominee of an unaffiliated presidential candidate shall execute the following pledge: “If selected for the position of elector as a nominee of an unaffiliated presidential candidate, I agree to serve and to mark my ballots for that candidate and for that candidate’s vice-presidential running mate.” The executed pledges must accompany the submission of the corresponding names to the Secretary of State and State Elections Commissioner.

§ 4325. Certification of electors.

In submitting this State’s certificate of ascertainment as required by 3 U.S.C. § 6, the Governor shall certify this State’s electors and state in the certificate all of the following:

(1) That the electors will serve as electors unless a vacancy occurs in the office of elector before the end of the meeting at which elector votes are cast, in which case a substitute elector will fill the vacancy.

(2) That if a substitute elector is appointed to fill a vacancy, the Governor will submit an amended certificate of ascertainment stating the names on the final list of this state’s electors.

§ 4326. Presiding officer; elector vacancy.

(a) The Secretary of State shall preside at the meeting of electors described in § 4327 of this title.

(b) The position of an elector not present to vote is vacant. The Secretary of State shall appoint an individual as a substitute elector to fill a vacancy as follows:

(1) If the alternate elector is present to vote, by appointing the alternate elector for the vacant position.

(2) If the alternate elector for the vacant position is not present to vote, by appointing an elector chosen by lot from among the alternate electors present to vote who were nominated by the same political party or unaffiliated presidential candidate.

(3) If the number of alternate electors present to vote is insufficient to fill any vacant position under paragraphs (b)(1) and (b)(2) of this section, by appointing any immediately available individual who is qualified to serve as an elector and chosen through nomination by and plurality vote of the remaining electors, including nomination and vote by a single elector if only 1 remains.

(4) If there is a tie between at least 2 nominees for substitute elector in a vote conducted under paragraph (b)(3) of this section, by appointing an elector chosen by lot from among those nominees.

(5) If all elector positions are vacant and cannot be filled under paragraphs (b)(1) through (b)(4) of this section, by appointing a single presidential elector, with remaining vacant positions to be filled under paragraph (b)(3) of this section and, if necessary, paragraph (b)(4) of this section.

(c) To qualify as a substitute elector under subsection (b) of this section, an individual who has not executed the pledge required under § 4324 of this title shall execute the following pledge: "I agree to serve and to mark my ballots for President and Vice President consistent with the pledge of the individual to whose elector position I have succeeded."

§ 4327. Elector voting.

(a) At the time designated for elector voting and after all vacant positions have been filled under § 4326 of this title, the Secretary of State shall provide each elector with a presidential and a vice-presidential ballot. The elector shall mark the elector's presidential and vice-presidential ballots with the elector's votes for the offices of President and Vice President, respectively, along with the elector's signature and the elector's legibly printed name.

(b) Except as otherwise provided by law of this State other than this subchapter, each elector shall present both completed ballots to the Secretary of State, who shall examine the ballots and accept as cast all ballots of electors whose votes are consistent with their pledges executed under § 4324 or § 4326(c) of this title. Except as otherwise provided by law of this State other than this subchapter, the Secretary of State may not accept and may not count either an elector's

111 presidential or vice-presidential ballot if the elector has not marked both ballots or has marked a ballot in violation of the
112 elector's pledge.

113 (c) An elector who refuses to present a ballot, presents an unmarked ballot, or presents a ballot marked in violation
114 of the elector's pledge executed under § 4324 or §4326(c) of this title vacates the office of elector, creating a vacant
115 position to be filled under § 4326 of this title.

116 (d) The Secretary of State shall distribute ballots to and collect ballots from a substitute elector and repeat the
117 process under this section of examining ballots, declaring and filling vacant positions as required, and recording
118 appropriately completed ballots from the substituted electors, until all of this State's electoral votes have been cast and
119 recorded.

120 § 4328. Elector replacement; associated certificates.

121 (a) After the vote of this State's electors is completed, if the final list of electors differs from any list that the
122 Governor previously included on a certificate of ascertainment prepared and transmitted under 3 U.S.C. § 6, the Secretary
123 of State immediately shall prepare an amended certificate of ascertainment and transmit it to the Governor for the
124 Governor's signature.

125 (b) The Governor immediately shall deliver the signed amended certificate of ascertainment to the Secretary of
126 State and a signed duplicate original of the amended certificate of ascertainment to all individuals entitled to receive this
127 State's certificate of ascertainment, indicating that the amended certificate of ascertainment is to be substituted for the
128 certificate of ascertainment previously submitted.

129 (c) The Secretary of State shall prepare a certificate of vote. The electors on the final list shall sign the certificate.
130 The Secretary of State shall process and transmit the signed certificate with the amended certificate of ascertainment under
131 3 U.S.C. §§ 9, 10, and 11.

132 § 4329. Uniformity of application and construction.

133 In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the
134 law with respect to its subject matter among states that enact it.

SYNOPSIS

In *Chiafalo v. Washington*, 140 S.Ct. 2316 (2020), the United States Supreme Court made clear that states have the authority to remove or punish presidential electors who do not adhere to their obligation to vote faithfully for their parties' candidates.

This Act provides Delawareans with confidence that the votes they have cast will be honored when the Electoral College meets to decide the outcome of presidential elections by providing for the orderly operation of Delaware's Electoral College voting process.

This Act adopts the Uniform Faithful Presidential Electors Act, which was approved by the Uniform Law Commission. The Uniform Law Commission “provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.”

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Gay