

# Election Statute Navigator: North Dakota

The Election Law Program prepared this Election Law Navigator to highlight state election statutes particularly relevant to the 2020 cycle. The Election Law Navigator is updated as of March 1, 2021. Please contact [elect@wm.edu](mailto:elect@wm.edu) with questions or suggestions. To access COVID-specific legal information impacting this state's election process, please use this link: <https://ebenchbook.org/north-dakota/covid/#tracker>.

## Voter Registration

- Voter permitted to register up to and including Election Day (aka Same Day Registration)
- Residency requirement – [§ 16.1-01-04](#)
  - A resident of this state who has resided in the precinct at least thirty days immediately preceding any election
- Prior conviction eligibility – See state code for specifics: – [§ 16.1-02-08.1](#)
- Voters judged mentally incompetent or under guardianship for a mental disability cannot vote
  - See N.D. Const. art. 2, § 2.
    - No person who has been declared mentally incompetent by order of a court or other authority having jurisdiction, which order has not been rescinded, shall be qualified to vote.
  - See N.D. Cent. Code – [§ 30.1-28-04\(3\)](#)
    - Except upon specific findings of the court, no ward may be deprived of the right to vote.
- Voter list maintenance guidelines
  - North Dakota is exempt from NVRA requirements because they either had no voter registration requirements or permitted Election Day registration at the time the NVRA was enacted.

## State Absentee, Early, and Mail Voting

- Early voting allowed – [§ 16.1-07-15](#)
  - 15 days before election - day before election
- The County auditor chooses and publishes the hours
- No-excuse absentee voting – [§ 16.1-07-01](#)
- Online absentee ballot application available
  - [See official North Dakota Registration website](#)
- Absentee ballot application is verified – [§ 16.1-07-08](#); [§ 16.1-07-12](#)
- Permanent absentee voting options – [§ 16.1-07-05\(1\)](#)
  - Remains in effect for the calendar year
- Absentee ballot verification details – [§ 16.1-07-08](#); [§ 16.1-07-12](#)

- Return envelopes are printed with an affidavit that the voter must sign under the penalty of possible criminal prosecution for making a false statement. The signature on the affidavit is compared to the signature on the absentee ballot application to determine if they correspond. If they do not correspond or the affidavit is found to be insufficient, the ballot is rejected.
- Someone other than the voter can return an absentee or mail ballot on behalf of the voter – [§ 16.1-07-08](#)
  - An absentee voter may designate an agent. The agent may not, at that time, be a candidate for any office to be voted upon by the absent voter. The agent must provide a signed, written authorization from an applicant.
- Deadline by which election official must receive absentee/mailed ballots – [§ 16.1-07-09](#)
  - The day before the election. Before the canvass if postmarked the day before the election.
- State accepts postmarked ballots that arrive after election day – [§ 16.1-07-09](#)
- State is required to provide secrecy sleeve for absentee/mail ballot – [§ 16.1-07-08](#)
- Absentee/Mail ballot processing and counting procedures – [§ 16.1-07-12](#)
- Absentee ballots precinct is established for counting all absentee ballots in the county – [§ 16.1-07-12.1](#)
- Spoiling ballot restrictions – [§ 16.1-13-32](#); [§ 16.1-15-08](#); [§ 16.1-06-14](#)

## In-Person Voter ID

- Photo ID requirements – [§ 16.1-05-07](#)
- Photo ID not required – [§ 16.1-05-07](#)
- Exceptions to Voter ID Requirements – [§ 16.1-05-07](#)
  - If an individual's valid form of ID does not include the required information or the information is not current, the identification must be supplemented by one of the following that provides the missing or outdated information:
    - Current utility bill
    - Current bank statement
    - Check issued by a federal, state or local government
    - Paycheck
    - Document issued by a federal, state or local government
- Options for voters without ID – [§ 16.1-05-07](#)
  - If an individual is not able to show a valid form of identification but asserts qualifications as an elector in the precinct in which the individual desires to vote, the individual may mark a ballot that must be securely set aside in a sealed envelope designed by the secretary of state. After the ballot is set aside, the individual may show a valid form of identification to either a polling place election board member if the individual returns to the polling place before the polls close, or to an employee of the office of the election official responsible for the administration of the election before the meeting of the

canvassing board occurring on the sixth day after the election. Each ballot set aside under this subsection must be presented to the members of the canvassing board for proper inclusion or exclusion from the tally.

- The following forms of identification are valid for individuals living under special circumstances who do not possess a valid form of identification:
  - For an individual living in a long-term care facility, a long-term care certificate prescribed by the secretary of state and issued by a long-term care facility in this state;
  - For a uniformed service member or immediate family member temporarily stationed away from the individual's residence in this state, or a resident of the state temporarily living outside the country, a current military identification card or passport; and
  - For an individual living with a disability that prevents the individual from traveling away from the individual's home, the signature on an absentee or mail ballot application from another qualified elector who, by signing, certifies the applicant is a qualified elector.

## Provisional Voting

- Provisional ballot availability – [§ 16.1-13-34](#)
  - North Dakota does not require voters to register and only uses provisional ballots if a court order has extended the polling hours. If this happens, the secretary of state would proscribe procedures.
- North Dakota is exempt from [HAVA](#)'s provisional ballot requirements.

## Polling Place

- Polling Place availability and requirements – [§ 16.1-04-02](#); [§ 16.1-01-03](#)
- Electioneering or campaigning must not be closer than 100 feet to the entrance of the polling place – [§ 16.1-10-06](#)

## State Emergency Rules and How Elections are Affected

- Governor has authority to set rules and procedures (after declaring “election emergency”) – [§ 37-17.1-05\(6\)\(a\)](#)
- Listed triggers for Emergency Rules – [§16.1-07-34](#)
  - If an international, national, state, or local disaster or emergency or other situation arises which makes substantial compliance with the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff et seq.] impossible or impracticable, as confirmed by the existence of armed conflict involving the armed forces of the United States or the mobilization of those forces, including national guard and reserve component members of this state, by the occurrence of a natural disaster or the

existence of a state of emergency, civil unrest, war, or other exigency in a foreign country, or by an official declaration by the governor that a state of disaster or emergency exists, the secretary of state may prescribe special procedures or requirements as may be necessary to facilitate absentee voting by those absent uniformed services voters or overseas voters directly affected and who are eligible to vote in this state.

- Voters can request replacement ballot in case of emergency – [§ 16.1-07-05](#)
- Other:
  - [§ 16.1-07-34](#)
    - Secretary of state can apply special rules to allow military and overseas citizens to vote when typical federal and local laws wouldn't work in a state of emergency.
  - [§ 16.1-15-06](#)
    - Except in cases of inclement weather, the election judge appointed shall deliver canvassing results to the auditor.

## Counting Rules

- Voting system requirements -- [§ 16.1-06-04](#); [§ 16.1-06-11](#); [§ 16.1-06-14](#); [§ 16.1-06-15](#)
- Counting procedures
  - [§ 16.1-13-25](#) – Elector may write name on ballot – Counting
  - [§ 16.1-15-01.1](#) – Counting write-in votes
- Other:
  - North Dakota does not require post-election audits

## Contest/Protest, Recount Rules

- Voter protesting – [§ 16.1-16-02](#)
  - A defeated candidate or ten qualified electors may contest the nomination or election of any person or the approval or rejection of any question or proposition submitted to a vote of the electorate, pursuant to chapters [16.1-04](#), [16.1-05](#), [16.1-06](#), [16.1-07](#), [16.1-08.1](#), [16.1-09](#), [16.1-10](#), and [16.1-11](#). In a county election to change the county seat or to change the boundaries of the county, the complaint must be filed against the board of county commissioners, who shall appear and defend the contest action
- Candidate protesting – [§ 16.1-16-01](#)
  - A candidate may request a recount where the candidate failed to be elected by more than 1/2 of 1 percent and less than 2 percent of the highest vote cast for a candidate for that office. The request must be made within 3 days of the relevant canvass. The Secretary of State must notify counties of the recount request within 4 days of the state canvass and a recount must take place within 7 days (for legislative offices) or 14 days (for statewide offices). The candidate must pay for the recount.
- Contest filing guidelines – [§ 16.1-14-08](#); [§ 16.1-14-09](#)
- Automatic recount – [§ 16.1-16-01](#)

- A recount (automatic) must be conducted where a candidate failed to be elected by 1/2 of 1% or less of the highest vote cast for a candidate for that office.
- Contest/Protest recount – [§ 16.1-16-01](#)
  - A demand for a recount may be made by any of the following:
    - Any individual who failed to be nominated by the individual's party or to a no-party office in a primary election by more than one percent and less than two percent of the highest vote cast for a candidate seeking nomination from the political party for the office sought or for a candidate for the no-party office sought.
    - Any individual who failed to be elected in a general or special election by more than one-half of one percent and less than two percent of the highest vote cast for a candidate for that office.
  - [§ 16.1-16-05](#) -- an election contest may be commenced for any of the following causes:
    - If the contestee does not or cannot meet the qualifications to hold the office as required by law.
    - Because of illegal votes or erroneous or fraudulent voting, count, canvass, or recount of votes.