

Assembly Bill No. 186–Assemblymen Thompson, Miller, Bilbray-Axelrod, Watts, Assefa; Fumo, Munk and Spiegel

Joint Sponsors: Senators Ohrenschall,  
D. Harris; and Woodhouse

CHAPTER.....

AN ACT relating to elections; enacting the Agreement Among the States to Elect the President by National Popular Vote; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

The United States Constitution requires the election of President and Vice President by presidential electors from each state who are appointed in the manner directed by each state legislature under the federal constitutional power granted to the states by the Presidential Electors Clause. (U.S. Const. Art. II, § 1, cl. 2, U.S. Const. Amend. XII) The United States Supreme Court has stated that the Presidential Electors Clause “concede[s] plenary power to the state legislatures in the matter of the appointment of electors” and “recognizes that the people act through their representatives in the legislature, and leaves it to the legislature exclusively to define the method of effecting the object.” (*McPherson v. Blacker*, 146 U.S. 1, 27, 35 (1892)) The Supreme Court also has stated that the Presidential Electors Clause was “so framed that congressional and federal influence might be excluded” and, as a result, “the appointment and mode of appointment of electors belong exclusively to the states under the [C]onstitution of the United States.” (*McPherson*, 146 U.S. at 35)

Under existing law in Nevada, the Legislature has exercised its power to define the method of appointing this State’s presidential electors by enacting the Uniform Faithful Presidential Electors Act. (NRS 298.005-298.089) Existing law in the Uniform Act sets forth the process for the nomination of presidential electors, and alternates thereof, by major and minor political parties and by independent candidates, and requires each nominee for presidential elector and alternate to sign a pledge to vote only for the candidates for President and Vice President who receive the highest number of votes in this State at the general election. (NRS 298.035, 298.045) The nominees for presidential elector whose candidates for President and Vice President receive the highest number of votes in this State at the general election are the presidential electors, and the presidential electors may vote only for the candidates for President and Vice President who receive the highest number of votes in this State at the general election. (NRS 298.065, 298.075)

**Section 3** of this bill enacts the Agreement Among the States to Elect the President by National Popular Vote to supplement existing law in the Uniform Act. The Agreement takes effect when states cumulatively possessing a majority of the electoral votes have enacted the Agreement. **Sections 3.8-9** of this bill amend existing law in the Uniform Act to revise the method of appointing this State’s presidential electors if the Agreement takes effect and applies to a presidential election. However, for any presidential election in which the Agreement is not effective or does not apply to the election, existing law in the Uniform Act governs the method of appointing this State’s presidential electors.

**Sections 3 and 7** of this bill provide that if the Agreement is effective and applies to a presidential election: (1) the chief elections official will determine which slate of candidates for President and Vice President wins the national popular vote and will designate that presidential slate as the national popular vote



winner; and (2) except in the case of a tie in the national popular vote, the nominees for presidential elector whose slate of candidates for President and Vice President is the national popular vote winner become the presidential electors. **Sections 3 and 8** of this bill provide that if the Agreement is effective and applies to a presidential election, the presidential electors shall, with limited exception, mark their presidential elector ballots for the national popular vote winner. **Sections 2, 3.8-6 and 9** of this bill make conforming changes.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 298 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

**Sec. 2.** *“Agreement” means the Agreement Among the States to Elect the President by National Popular Vote set forth in section 3 of this act.*

**Sec. 3.** *The Agreement Among the States to Elect the President by National Popular Vote is hereby enacted into law and entered into with all jurisdictions legally joining the Compact, in substantially the form set forth in this section:*

*Article I–Membership*

*Any State of the United States and the District of Columbia may become a member of this agreement by enacting this agreement.*

*Article II–Right of the People in Member States to  
Vote for President and Vice President*

*Each member state shall conduct a statewide popular election for President and Vice President of the United States.*

*Article III–Manner of Appointing Presidential  
Electors in Member States*

*Prior to the time set by law for the meeting and voting by the presidential electors, the chief election official of each member state shall determine the number of votes for each presidential slate in each State of the United States and in the District of Columbia in which votes have been cast in a statewide popular*



*election and shall add such votes together to produce a “national popular vote total” for each presidential slate.*

*The chief election official of each member state shall designate the presidential slate with the largest national popular vote total as the “national popular vote winner.”*

*The presidential elector certifying official of each member state shall certify the appointment in that official’s own state of the elector slate nominated in that state in association with the national popular vote winner.*

*At least six days before the day fixed by law for the meeting and voting by the presidential electors, each member state shall make a final determination of the number of popular votes cast in the state for each presidential slate and shall communicate an official statement of such determination within 24 hours to the chief election official of each other member state.*

*The chief election official of each member state shall treat as conclusive an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a state’s final determination conclusive as to the counting of electoral votes by Congress.*

*In event of a tie for the national popular vote winner, the presidential elector certifying official of each member state shall certify the appointment of the elector slate nominated in association with the presidential slate receiving the largest number of popular votes within that official’s own state.*

*If, for any reason, the number of presidential electors nominated in a member state in association with the national popular vote winner is less than or greater than that state’s number of electoral votes, the presidential candidate on the presidential slate that has been designated as the national popular vote winner shall have the power to nominate the presidential electors for that state and that state’s presidential elector certifying official shall certify the appointment of such nominees.*

*The chief election official of each member state shall immediately release to the public all vote counts or statements of votes as they are determined or obtained.*



*This article shall govern the appointment of presidential electors in each member state in any year in which this agreement is, on July 20, in effect in states cumulatively possessing a majority of the electoral votes.*

#### *Article IV—Other Provisions*

*This agreement shall take effect when states cumulatively possessing a majority of the electoral votes have enacted this agreement in substantially the same form and the enactments by such states have taken effect in each state.*

*Any member state may withdraw from this agreement, except that a withdrawal occurring six months or less before the end of a President's term shall not become effective until a President or Vice President shall have been qualified to serve the next term.*

*The chief executive of each member state shall promptly notify the chief executive of all other states of when this agreement has been enacted and has taken effect in that official's state, when the state has withdrawn from this agreement, and when this agreement takes effect generally.*

*This agreement shall terminate if the electoral college is abolished.*

*If any provision of this agreement is held invalid, the remaining provisions shall not be affected.*

#### *Article V—Definitions*

*For purposes of this agreement, "chief executive" shall mean the Governor of a State of the United States or the Mayor of the District of Columbia;*

*"elector slate" shall mean a slate of candidates who have been nominated in a state for the position of presidential elector in association with a presidential slate;*

*"chief election official" shall mean the state official or body that is authorized to certify the total number of popular votes for each presidential slate;*



*“presidential elector” shall mean an elector for President and Vice President of the United States;*

*“presidential elector certifying official” shall mean the state official or body that is authorized to certify the appointment of the state’s presidential electors;*

*“presidential slate” shall mean a slate of two persons, the first of whom has been nominated as a candidate for President of the United States and the second of whom has been nominated as a candidate for Vice President of the United States, or any legal successors to such persons, regardless of whether both names appear on the ballot presented to the voter in a particular state;*

*“state” shall mean a State of the United States and the District of Columbia; and*

*“statewide popular election” shall mean a general election in which votes are cast for presidential slates by individual voters and counted on a statewide basis.*

**Sec. 3.8.** NRS 298.005 is hereby amended to read as follows:  
298.005 NRS 298.005 to 298.089, inclusive, *and section 2 of this act* may be cited as the Uniform Faithful Presidential Electors Act.

**Sec. 3.9.** NRS 298.015 is hereby amended to read as follows:  
298.015 As used in NRS 298.005 to 298.089, inclusive, ~~the~~ *and section 2 of this act, unless the context otherwise requires:*

*1. The words and terms defined in NRS 298.023 and 298.028 and section 2 of this act have the meanings ascribed to them in those sections ~~;~~ and*

*2. If the Agreement Among the States to Elect the President by National Popular Vote is effective and the Agreement governs the appointment of presidential electors for the current presidential election, the words and terms defined in the Agreement have the meanings ascribed to them therein.*

**Sec. 4.** NRS 298.023 is hereby amended to read as follows:  
298.023 “Alternate” means a person selected ~~pursuant to NRS 298.035~~ to be an alternate to a nominee for presidential elector.

**Sec. 5.** NRS 298.028 is hereby amended to read as follows:  
298.028 “Nominee for presidential elector” means a person selected ~~pursuant to NRS 298.035~~ to be a nominee to the position of presidential elector by a major political party, a minor political



party or an independent candidate nominated for the office of President pursuant to NRS 298.109.

**Sec. 6.** NRS 298.045 is hereby amended to read as follows:

298.045 1. Except as otherwise provided in subsection 2, a nominee for presidential elector or an alternate may not serve as a presidential elector unless the nominee for presidential elector or the alternate signs a pledge in substantially the following form:

If selected for the position of presidential elector, I agree to serve as such and to vote only for the ~~[nominees]~~ *candidates* for President and Vice President of the political party or the independent candidates who received the highest number of votes in this State at the general election. *However, if the Agreement Among the States to Elect the President by National Popular Vote is effective and the Agreement governs the appointment of presidential electors for the current presidential election, I agree to vote only for the candidates for President and Vice President on the winning presidential slate as determined pursuant to Article III of the Agreement.*

2. If a nominee for presidential elector or an alternate is physically unable to sign the pledge, the pledge may be signed by proxy in the presence of the nominee for presidential elector or the alternate, as applicable.

3. The chair and secretary of the convention of a major political party, the person who is authorized to file the list of candidates for partisan office of a minor political party with the Secretary of State pursuant to NRS 293.1725 or an independent candidate shall submit to the Secretary of State each pledge signed pursuant to this section with the list of nominees for presidential elector and alternates.

**Sec. 7.** NRS 298.065 is hereby amended to read as follows:

298.065 1. The Secretary of State shall preside at the meeting of presidential electors held pursuant to 3 U.S.C. § 7.

2. Except as otherwise provided in this section and NRS 298.075 ~~§~~:

*(a) If the Agreement is not effective or the Agreement does not govern the appointment of presidential electors for the current presidential election, the presidential electors are the* nominees for presidential elector whose candidates for President and Vice President receive the highest number of votes in this State at the general election. ~~[are the presidential electors.]~~



*(b) If the Agreement is effective and the Agreement governs the appointment of presidential electors for the current presidential election, the presidential electors are the elector slate nominated in association with the winning presidential slate as determined pursuant to Article III of the Agreement.*

~~[2.]~~ 3. If a ~~[nominee for]~~ presidential elector *described in subsection 2* is not present to vote at the meeting, the position of presidential elector to be filled by that ~~[nominee for presidential elector]~~ *person* is vacant and the vacancy must be filled as follows:

(a) If the alternate is present at the meeting, the Secretary of State shall appoint the alternate to the position of presidential elector;

(b) If the alternate is not present at the meeting, the Secretary of State shall appoint to the position of presidential elector a person chosen by lot from among the alternates present at the meeting, if any;

(c) If no alternates are present at the meeting, the Secretary of State shall appoint to the position of presidential elector a person who is:

(1) A qualified elector;

(2) Present at the meeting; and

(3) Chosen through nomination by and plurality vote of presidential electors who are present at the meeting; and

(d) If votes cast pursuant to subparagraph (3) of paragraph (c) result in a tie, the Secretary of State shall appoint to the position of presidential elector a person who is chosen by lot from those persons who tied for the most votes.

~~[3.]~~ 4. If all the positions of presidential elector are vacant and no alternates are present at the meeting, the Secretary of State shall appoint from the qualified electors one person to the position of presidential elector, and the remaining positions must be filled pursuant to paragraphs (c) and (d) of subsection ~~[2.]~~ 3.

~~[4.]~~ 5. The nomination by and vote of a single presidential elector is sufficient to choose a person to be appointed to the position of presidential elector pursuant to subparagraph (3) of paragraph (c) of subsection ~~[2.]~~ 3.

~~[5.]~~ 6. Except as otherwise provided in subsection ~~[6.]~~ 7, a person appointed to the position of presidential elector pursuant to this section may not serve in that position unless the person signs a pledge in substantially the following form:



I agree to serve as a presidential elector and to vote only for the ~~[nominees]~~ *candidates* for President and Vice President of the *political* party or the independent candidates who received the highest number of votes in this State at the general election. *However, if the Agreement Among the States to Elect the President by National Popular Vote is effective and the Agreement governs the appointment of presidential electors for the current presidential election, I agree to vote only for the candidates for President and Vice President on the winning presidential slate as determined pursuant to Article III of the Agreement.*

~~[6.]~~ 7. If a person appointed to the position of presidential elector pursuant to this section is physically unable to sign the pledge, the pledge may be signed by proxy.

~~[7.]~~ 8. If a person appointed to a position of presidential elector pursuant to this section does not sign the pledge described in subsection ~~[5.]~~ 6, that position of presidential elector is vacant and must be filled pursuant to this section.

**Sec. 8.** NRS 298.075 is hereby amended to read as follows:

298.075 1. The Secretary of State shall provide to each presidential elector a ballot for the office of President and a ballot for the office of Vice President. ~~[The]~~

2. *Each* presidential elector shall mark the applicable ballot provided *to him or her* by the Secretary of State for :

*(a) If the Agreement is not effective or the Agreement does not govern the appointment of presidential electors for the current presidential election,* the person who received the highest number of votes at the general election for the office of President and the person who received the highest number of votes at the general election for the office of Vice President. ~~[The]~~

*(b) If the Agreement is effective and the Agreement governs the appointment of presidential electors for the current presidential election, the person who is the candidate for the office of President and the person who is the candidate for the office of Vice President on the winning presidential slate as determined pursuant to Article III of the Agreement.*

3. *Each* presidential elector shall sign and legibly print his or her name on the ballots *provided to him or her by the Secretary of State* and present the ballots to the Secretary of State.

~~[2.]~~ 4. After all presidential electors have presented their ballots to the Secretary of State, the Secretary of State shall examine each ballot. If a presidential elector:



(a) Presents both ballots and the ballots are marked with votes ~~for the person who received the highest number of votes at the general election for the office of President and the person who received the highest number of votes at the general election for the office of Vice President, respectively,~~ *that conform with the provisions of subsection 2*, the Secretary of State shall accept both ballots.

(b) Does not present both ballots, presents an unmarked ballot or presents a ballot marked with a vote that does not conform with the provisions of subsection ~~H+ 2~~:

(1) The Secretary of State shall refuse to accept either ballot of the presidential elector; and

(2) The Secretary of State shall deem the presidential elector's position vacant. The vacancy must be filled pursuant to the provisions of NRS 298.065. The person appointed to fill the vacancy in the position of presidential elector, after signing the pledge described in NRS 298.065, shall mark both ballots and present both ballots to the Secretary of State pursuant to this section.

5. Only the votes accepted by the Secretary of State pursuant to this section may be recorded on the lists of votes made by the presidential electors pursuant to 3 U.S.C. § 9.

**Sec. 9.** NRS 298.089 is hereby amended to read as follows:

298.089 ~~H+~~

1. *Except as otherwise provided in subsection 2, in* applying and construing the provisions of NRS 298.005 to 298.089, inclusive, *and section 2 of this act*, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that have enacted the Uniform Faithful Presidential Electors Act.

2. *If the Agreement is effective and the Agreement governs the appointment of presidential electors for the current presidential election, the provisions of the Agreement and the Uniform Faithful Presidential Electors Act must be applied and construed to supplement each other, except that if there is any conflict between the application or construction of the provisions of the Agreement and the Uniform Faithful Presidential Electors Act, the provisions of the Agreement control.*

**Sec. 10.** This act becomes effective upon passage and approval.

