

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2122

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[Introduced February 10, 2021; Referred to the Committee
on the Judiciary then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §3-13-1, §3-13-2, §3-13-3, §3-13-4, §3-13-5, and §3-13-6, all relating to
3 implementing The Agreement Among the States to Elect the President and Vice President
4 by National Popular Vote; setting forth who may be members to the agreement;
5 establishing the manner of appointing presidential electors in the member states; setting
6 forth the provisions of the agreement that the member states must enact into state law
7 setting forth the responsibilities of certain officials; and defining terms.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 13. AGREEMENT AMONG THE STATES TO ELECT THE PRESIDENT BY
NATIONAL VOTE.**

§3-13-1. Agreement Among the States.

1 The Agreement Among the States to Elect the President by National Popular Vote is
2 enacted into law and entered into with all other states legally joining in the agreement in the form
3 substantially as set forth in this article.

§3-13-2. Membership

1 Any state of the United States and the District of Columbia may become a member of this
2 agreement by enacting this agreement.

§3-13-3. Right of the people in member states to vote for President and Vice President.

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

§3-13-4. Manner of appointing presidential electors in member states.

1 (a) Prior to the time set by law for the meeting and voting by the presidential electors, the
2 chief election official of each member state shall determine the number of votes for each
3 presidential slate in each state of the United States and in the District of Columbia in which votes
4 have been cast in a statewide popular election and shall add such votes together to produce a
5 “national popular vote total” for each presidential slate.

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

8 (c) The presidential elector certifying official of each member state shall certify the
9 appointment in that official’s own state of the elector slate nominated in that state in association
10 with the national popular vote winner.

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

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

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

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

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

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

§3-13-5. Other provisions.

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

4 (b) Any member state may withdraw from this agreement, except that a withdrawal
5 occurring six months or less before the end of a president's term shall not become effective until
6 a president or vice president shall have been qualified to serve the next term.

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

11 (d) This agreement shall terminate if the electoral college is abolished.

12 (e) If any provision of this agreement is held invalid, the remaining provisions shall not be
13 affected.

§3-13-6. Definitions.

1 For purposes of this article:

2 (1) "Chief executive" means the Governor of a state of the United States or the Mayor of
3 the District of Columbia.

4 (2) "Elector slate" means a slate of candidates who have been nominated in a state for
5 the position of presidential elector in association with a presidential slate.

6 (3) "Chief election official" means the state official or body that is authorized to certify the
7 total number of popular votes for each presidential slate.

8 (4) "Presidential elector" means an elector for President and Vice President of the United

9 States.

10 (5) "Presidential elector certifying official" shall mean the state official or body that is
11 authorized to certify the appointment of the state's presidential electors.

12 (6) "Presidential slate" means a slate of two persons, the first of whom has been nominated
13 as a candidate for President of the United States and the second of whom has been nominated
14 as a candidate for Vice President of the United States, or any legal successors to such persons,
15 regardless of whether both names appear on the ballot presented to the voter in a particular state.

16 (7) "State" means a state of the United States, and the District of Columbia.

17 (8) "Statewide popular election" means a general election in which votes are cast for
18 presidential slates by individual voters and counted on a statewide basis.

NOTE: The Purpose of this bill is to implement the agreement among the states to elect the President and Vice President by national popular vote. The bill sets forth who may be members to the agreement. The bill establishes the manner of appointing presidential electors in the member states. The bill sets forth the provisions of the agreement that the member states must enact into state law. The bill also sets forth the responsibilities of certain officials. The bill further defines terms.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.