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TITLE 3.—THE PRESIDENT

Chapter 1.—PRESIDENTIAL ELECTIONS AND VACANCIES

400 § 1. Time of appointing electors. 400

The electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President. (June 25, 1948, ch. 644, § 1, 62 Stat. 672.)

401 § 2. Failure to make choice on prescribed day. 401

Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct. (June 25, 1948, ch. 644, § 1, 62 Stat. 672.)

402 § 3. Number of electors. 402

The number of electors shall be equal to the number of Senators and Representatives to which the several States are by law entitled at the time when the President and Vice President to be chosen come into office; except, that where no apportionment of Representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of Senators and Representatives. (June 25, 1948, ch. 644, § 1, 62 Stat. 672.)

403 § 4. Vacancies in electoral college. 403

Each State may, by law, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote. (June 25, 1948, ch. 644, § 1, 62 Stat. 673.)

404 § 5. Determination of controversy as to appointment of electors. 404

If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned. (June 25, 1948, ch. 644, § 1, 62 Stat. 673.)

405 § 6. Credentials of electors; transmission to Archivist of the United States and to Congress; public inspection. 405

It shall be the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of the electors in such State by the final ascertainment, under and in pursuance of the laws

of such State providing for such ascertainment, to communicate by registered mail under the seal of the State to the Archivist of the United States, a certificate of such ascertainment of the electors appointed, setting forth the names of such electors and the canvass or other ascertainment under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast; and it shall also thereupon be the duty of the executive of each State to deliver to the electors of such State, on or before the day on which they are required by section 7 of this title to meet, six duplicate-originals of the same certificate under the seal of the State; and if there shall have been any final determination in a State in the manner provided for by law of a controversy or contest concerning the appointment of all or any of the electors of such State, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate under the seal of the State to the Archivist of the United States, a certificate of such determination in form and manner as the same shall have been made; and the certificate or certificates so received by the Archivist of the United States, shall be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection; and the Archivist of the United States, at the first meeting of Congress thereafter shall transmit to the two Houses of Congress copies in full of each and every such certificate so received at the National Archives and Records Administration. (June 25, 1948, ch. 644, 62 Stat. 673; Oct. 31, 1951, ch. 655, § 6, 65 Stat. 711; Oct. 19, 1984, Pub. L. 98–497, Title I, § 107(e)(1), (2)(A), 98 Stat. 2291.)

406 § 7. Meeting and vote of electors. **406**

The electors of President and Vice President of each State shall meet and give their votes on the first Monday after the second Wednesday in December next following their appointment at such place in each State as the legislature of such State shall direct. (June 25, 1948, ch. 644, § 1, 62 Stat. 673.)

407 § 8. Manner of voting. **407**

The electors shall vote for President and Vice President, respectively, in the manner directed by the Constitution. (June 25, 1948, ch. 644, § 1, 62 Stat. 674.)

408 § 9. Certificates of votes for President and Vice President. **408**

The electors shall make and sign six certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one of the votes for President and the other of the votes for Vice President, and shall annex to each of the certificates one of the lists of the electors which shall have been furnished to them by direction of the executive of the State. (June 25, 1948, ch. 644, § 1, 62 Stat. 674.)

409 § 10. Sealing and endorsing certificates. **409**

The electors shall seal up the certificates so made by them, and certify upon each that the lists of all the votes of such States given for President, and of all the votes given for Vice President, are contained therein. (June 25, 1948, ch. 644, § 1, 62 Stat. 674.)

410 § 11. Disposition of certificates. 410

The electors shall dispose of the certificates so made by them and the lists attached thereto in the following manner:

First. They shall forthwith forward by registered mail one of the same to the President of the Senate at the seat of government.

Second. Two of the same shall be delivered to the secretary of state of the State, one of which shall be held subject to the order of the President of the Senate, the other to be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection.

Third. On the day thereafter they shall forward by registered mail two of such certificates and lists to the Archivist of the United States at the seat of government, one of which shall be held subject to the order of the President of the Senate. The other shall be preserved by the Archivist of the United States for one year and shall be a part of the public records of his office and shall be open to public inspection.

Fourth. They shall forthwith cause the other of the certificates and lists to be delivered to the judge of the district in which the electors shall have assembled. (Oct. 31, 1951, ch. 655, § 7, 65 Stat. 712; Oct. 19, 1984, Pub. L. 98–497, Title I, § 107(e)(1), 98 Stat. 2291.)

411 § 12. Failure of certificates of electors to reach President of Senate or Archivist of the United States; demand on State for certificate. 411

When no certificate of vote and list mentioned in sections 9 and 11 of this title from any State shall have been received by the President of the Senate or by the Archivist of the United States by the fourth Wednesday in December, after the meeting of the electors shall have been held, the President of the Senate or, if he be absent from the seat of government, the Archivist of the United States shall request, by the most expeditious method available, the secretary of state of the State to send up the certificate and list lodged with him by the electors of such State; and it shall be his duty upon receipt of such request immediately to transmit same by registered mail to the President of the Senate at the seat of government. (Oct. 31, 1951, ch. 655, § 8, 65 Stat. 712; Oct. 19, 1984, Pub. L. 98–497, Title I, § 107(e)(1), (2)(B), 98 Stat. 2291.)

412 § 13. Same; demand on district judge for certificate. 412

When no certificates of votes from any State shall have been received at the seat of government on the fourth Wednesday in December, after the meeting of the electors shall have been held, the President of the Senate or, if he be absent from the seat of government, the Archivist of the United States shall send a special messenger to the district judge in whose custody one certificate of votes from the State has been lodged, and such judge shall forthwith transmit that list by the hand of such messenger to the seat of government. (Oct. 31, 1951, ch. 655, § 9, 65 Stat. 712; Oct. 19, 1984, Pub. L. 98–497, Title I, § 107(e)(1), 98 Stat. 2291.)

413 § 14. Forfeiture for messenger's neglect of duty. 413

Every person who, having been appointed, pursuant to section 13 of this title, to deliver the certificates of the votes of the electors to the President of the Senate, and having accepted such appointment,

shall neglect to perform the services required from him, shall forfeit the sum of $1,000. (June 25, 1948, ch. 644, § 1, 62 Stat. 675.)

414 § 15. Counting electoral votes in Congress. 414

Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted according to the rules in this subchapter provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 5 of this title to have been appointed, if the determination in said section provided for shall have been made, or by such successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State; but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in section 5 of this title, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently

decide is supported by the decision of such State so authorized by its law; and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of. (June 25, 1948, ch. 644, § 1, 62 Stat. 675.)

415 § 16. Same; seats for officers and Members of two Houses in joint meeting. 415

At such joint meeting of the two Houses seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators, in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this subchapter, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next calendar day, Sunday excepted, at the hour of 10 o'clock in the forenoon. But if the counting of the electoral votes and the declaration of the result shall not have been completed before the fifth calendar day next after such first meeting of the two Houses, no further or other recess shall be taken by either House. (June 25, 1948, ch. 644, § 1, 62 Stat. 676.)

416 § 17. Same; limit of debate in each House. 416

When the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or other question arising in the matter, each Senator and Representative may speak to such objection or question five minutes, and not more than once; but after such debate shall have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate. (June 25, 1948, ch. 644, § 1, 62 Stat. 676.)

417 **§ 18. Same; parliamentary procedure at joint meeting.** 417

While the two Houses shall be in meeting as provided in this chapter, the President of the Senate shall have power to preserve order; and no debate shall be allowed and no question shall be put by the presiding officer except to either House on a motion to withdraw. (Sept. 3, 1954, ch. 1263, § 3, 68 Stat. 1227.)

418 **§ 19. Vacancy in offices of both President and Vice President; officers eligible to act.** 418

418.1 (a)(1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President. 418.1

(2) The same rule shall apply in the case of the death, resignation, removal from office, or inability of an individual acting as President under this subsection.

418.2 (b) If, at the time when under subsection (a) of this section a Speaker is to begin the discharge of the powers and duties of the office of President, there is no Speaker, or the Speaker fails to qualify as Acting President, then the President pro tempore of the Senate shall, upon his resignation as President pro tempore and as Senator, act as President. 418.2

418.3 (c) An individual acting as President under subsection (a) or subsection (b) of this section shall continue to act until the expiration of the then current Presidential term, except that— 418.3

(1) if his discharge of the powers and duties of the office is founded in whole or in part on the failure of both the President-elect and the Vice-President-elect to qualify, then he shall act only until a President or Vice President qualifies; and

(2) if his discharge of the powers and duties of the office is founded in whole or in part on the inability of the President or Vice President, then he shall act only until the removal of the disability of one of such individuals.

418.4 (d)(1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President pro tempore to act as President under subsection (b) of this section, then the officer of the United States who is highest on the following list, and who is not under disability to discharge the powers and duties of the office of President shall act as President: Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Transportation, Secretary of Energy, Secretary of Education, Secretary of Veterans' Affairs. 418.4

(2) An individual acting as President under this subsection shall continue to do so until the expiration of the then current Presidential term, but not after a qualified and prior-entitled individual is able to act, except that the removal of the disability of an individual higher on the list contained in paragraph (1) of this subsection or the ability to qualify on the part of an individual higher on such list shall not terminate his service.

(3) The taking of the oath of office by an individual specified in the list in paragraph (1) of this subsection shall be held to constitute his resignation from the office by virtue of the holding of which he qualifies to act as President.

418.5 (e) Subsections (a), (b), and (d) of this section shall apply only to such officers as are eligible to the office of President under the Constitution. Subsection (d) of this section shall apply only to officers appointed, by and with the advice and consent of the Senate, prior to the time of the death, resignation, removal from office, inability, or failure to qualify, of the President pro tempore, and only to officers not under impeachment by the House of Representatives at the time the powers and duties of the office of President devolve upon them. 418.5

418.6 (f) During the period that any individual acts as President under this section, his compensation shall be at the rate then provided by law in the case of the President. (June 25, 1948, ch. 644, § 1, 62 Stat. 677; Sept. 9, 1965, Pub. L. 89–174, § 6(a), 79 Stat. 669; Oct. 15, 1966, Pub. L. 89–670, § 10(a), 80 Stat. 948; Aug. 12, 1970, Pub. L. 91–375, § 6(b), 84 Stat. 775; Aug. 4, 1977, Pub. L. 95–91, Title VII, § 709(g), 91 Stat. 609; Oct. 17, 1979, Pub. L. 96–88, Title V, § 508(a), 93 Stat. 692; Oct. 25, 1988, Pub. L. 100–527, § 13(a), 102 Stat. 2643.) 418.6

419 § 20. Resignation or refusal of office. 419

The only evidence of a refusal to accept, or of a resignation of the office of President or Vice President, shall be an instrument in writing, declaring the same, and subscribed by the person refusing to accept or resigning, as the case may be, and delivered into the office of the Secretary of State. (June 25, 1948, ch. 644, § 1, 62 Stat. 678.)

419.1 § 21. Definitions. 419.1

As used in this chapter the term—

(a) "State" includes the District of Columbia.

(b) "executives of each State" includes the Board of Commissioners of the District of Columbia. (Oct. 4, 1961, Pub. L. 87–389, § 2(a), 75 Stat. 820.)

Chapter 2.—OFFICE AND COMPENSATION OF PRESIDENT

420 § 101. Commencement of term of office. 420

The term of four years for which a President and Vice President shall be elected, shall, in all cases, commence on the 20th day of January next succeeding the day on which the votes of the electors have been given. (June 25, 1948, ch. 644, § 1, 62 Stat. 678.)

421 § 104. Salary of the Vice President. 421

(a) The per annum rate of salary of the Vice President of the United States shall be the rate determined for such position under chapter 11 of title 2, as adjusted under this section. Subject to subsection (b), effective at the beginning of the first month in which an adjustment takes effect under section 5303 of title 5 in the rates of pay under the General Schedule, the salary of the Vice President shall be adjusted by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the nearest higher multiple of $100), equal to the percentage of such per annum rate which corresponds to

the most recent percentage change in the ECI (relative to the date described in the next sentence), as determined under section 704(a)(1) of the Ethics Reform Act of 1989. The appropriate date under this sentence is the first day of the fiscal year in which such adjustment in the rates of pay under the General Schedule takes effect.

(b) In no event shall the percentage adjustment taking effect under the second and third sentences of subsection (a) in any calendar year (before rounding) exceed the percentage adjustment taking effect in such calendar year under section 5303 of title 5 in the rates of pay under the General Schedule. (June 25, 1948, ch. 644, 62 Stat. 678; Jan. 19, 1949, ch. 2, § 1(b), 63 Stat. 4; Mar. 2, 1955, ch. 9, § 4(c), 69 Stat. 11; Pub. L. 88–426, Title III, § 304(a), Aug. 14, 1964, 78 Stat. 422; Pub. L. 91–67, § 1, Sept. 15, 1969, 83 Stat. 106; Pub. L. 94–82, Title II, § 203, Aug. 9, 1975, 89 Stat. 420; Pub. L. 97–257, Title I, § 105(b), Sept. 10, 1982, 96 Stat. 849; Pub. L. 101–194, Title VII, § 704(a)(2)(A), Nov. 30, 1989, 103 Stat. 1769; Pub. L. 101–509, Title V, § 529 (Title I, § 101(b)(4)(I)), Nov. 5, 1990, 104 Stat. 1427, 1440; Pub. L. 103–356, Title I, § 101(2), Oct. 13, 1994, 108 Stat. 3410.)

422 § 111. Expense allowance of Vice President. **422**

There shall be paid to the Vice President in equal monthly installments an expense allowance of $10,000 per annum to assist in defraying expenses relating to or resulting from the discharge of his official duties, for which no accounting, other than for income tax purposes, shall be made by him. (Jan. 19, 1949 ch. 2, § 1(c), 63 Stat. 4; Oct. 20, 1951, ch. 521, § 619(b), 65 Stat. 570.)