

# Electoral Count Modernization Act

## (King/Klobuchar/Durbin draft)

### *Section-by-Section Summary*

<i>Electoral Count Modernization Act</i>	Existing Law	Summary of Provisions
§ 2(a)(1)	<b>§ 1. Time of Choosing Electors.</b>	<p>This section establishes Election Day as the time for choosing presidential Electors and prohibits states from choosing Electors on any other day.</p> <p>This section also clarifies through rules of construction that this section does not preclude states from:</p> <ul style="list-style-type: none"> <li>• (i) allowing early or absentee voting;</li> <li>• (ii) allowing voters standing in line at the close of polls to vote;</li> <li>• (iii) allowing officials to process, count, or tabulate ballots before Election Day or canvass ballots after Election Day;</li> <li>• (iv) providing any other rules to govern whether ballots were properly submitted under state law; and</li> <li>• (v) providing rules for filling elector vacancies under section 4.</li> </ul>
§ 2(a)(1)	<b>§ 2. Exception to Time of Choosing Electors.</b>	<p>Precludes state legislatures from directly appointing Electors after Election Day.</p> <p>Sets criteria that would permit a federal court to extend an election for a period of time past Election Day in extraordinary circumstances, such as a natural disaster</p>

<i>Electoral Count Modernization Act</i>	Existing Law	Summary of Provisions
		or terrorist attack, if a very high burden of proof is met.
§ 2(a)(2)	§ 3. <b>Number of Electors.</b>	This section is unchanged from existing law.
§ 2(a)(2)	§ 4. <b>Vacancies in Electoral College.</b>	Updates the ECA to allow states to provide for alternative Electors to fill individual vacancies that occur after Election Day. Alternative Electors must be appointed under laws enacted prior to Election Day.
§ 2(a)(2)	§ 5. <b>Determination of Controversy as to Appointment of Electors.</b>	<p>Ensures that a State’s final determination regarding its appointment of Electors is conclusive and governs the counting of electoral votes by Congress, as provided by the Constitution and the ECMA. Any slate of Electors appointed in a manner that is contrary to the requirements of this section is void and without legal effect.</p> <p>Establishes December 20th as the deadline for a State to complete the final determination for its appointment of Electors. Any controversies or contests relating to the outcome of the election must be finally resolved by this date.</p> <p>Establishes two distinct federal causes of action to enforce the requirements of this section.</p> <ul style="list-style-type: none"> <li>• (1) allows a candidate to file a lawsuit within three days of the missed December 20th deadline to ensure the certificates of identification of Electors reflect</li> </ul>

<i>Electoral Count Modernization Act</i>	Existing Law	Summary of Provisions
		<p>the final election results of the State; and</p> <ul style="list-style-type: none"> <li>• (2) allows an individual to file a lawsuit to challenge any aspect of a State’s final determination (of the appointment of Electors) within three days of the circumstances giving rise to the cause of action (i.e., requiring any legal challenges relating to the outcome of the election to be filed within three days of when the person knew or should have known of the potentially problematic occurrence).</li> </ul>
§ 2(a)(2)	§ 6. Certificate of Identification of Electors.	<p>Requires that the Governor of each State prepare and transmit Certificates of Identification of Electors that reflect the final determination of the appointment of Electors pursuant to Section 5 and to make a copy available online for public inspection.</p> <p>Requires the Governor to transmit 14 duplicate-original Certificates of Identification of Electors to various federal officials and the appointed Electors, as soon as practicable after the final determination is made.</p> <p>Establishes a process for the chief state election official or a federal court to prepare and transmit the Certificates of Identification of Electors in the case of failure by the Governor to perform their duties under this section.</p>

<i>Electoral Count Modernization Act</i>	<b>Existing Law</b>	<b>Summary of Provisions</b>
§ 2(a)(3)	<b>§ 7. Time and Place for Meeting and Voting of Electors.</b>	Changes the date for the Electors to meet and cast their votes from the first Monday after the second Wednesday in December to December 29th of each presidential election year.
N/A	<b>§ 8. Manner of Voting of Electors.</b>	This section is unchanged from existing law.
§ 2(a)(4)	<b>§ 9. Certificates of Votes by Electors.</b>	Directs the Electors to prepare seven copies of a Certificate of Votes by Electors, which lists their votes for President and Vice President; adds a requirement that the Certificate of Votes identify the candidate for which each Elector voted.
§ 2(a)(5)	<b>§ 10. Sealing and Endorsing Certificates.</b>	Requires Electors to seal their Certificate of Votes in an envelope, and place the envelope, a copy of the Certificate of Identification of Electors (prepared under Section 6), and any identification of an alternate Elector appointed under Section 4, into a separate outer envelope.
§ 2(a)(6)	<b>§ 11. Disposition of Certificates.</b>	Requires the Electors to transmit copies of their sealed envelopes containing Certificates of Votes and Certificates of Identification of Electors to the Archivist of the United States (for record-keeping), the President of the Senate, the Speaker of the House, the State’s chief election official (also for record-keeping), and the Chief Justice of the United States Supreme Court.
§ 2(a)(7)	<b>§ 12. Failure of Certificates of Electors to Reach President of the Senate or Archivist of the United</b>	Changes the day that the President of the Senate or Archivist of the United States must request Certificate of Votes of Electors from the chief election officer of a State if they have not yet been received

<i>Electoral Count Modernization Act</i>	Existing Law	Summary of Provisions
	<b>States; Demand on State for Certificate.</b>	from the State from the fourth Wednesday in December to January 3rd.
§ 2(a)(8)	<b>§ 13. Same; Demand on District Judge for Certificate.</b>	Changes the day that the President of the Senate or Archivist of the United States must request Certificate of Votes of Electors from the Chief Justice if they have not yet been received from the State from the fourth Wednesday in December to January 4th.
§ 2(a)(9)	<b>§ 14. Forfeiture for Messenger's Neglect of Duty.</b>	Strikes provision fining a messenger \$1000 for failure to deliver certificates from a district judge to the Archivist.
§ 2(a)(9)	<b>§ 15. Counting of Electors' Votes in Congress.</b>	<ul style="list-style-type: none"> <li>● Sets meeting of the joint session on January 6th.</li> <li>● Specifies that the President <i>pro tempore</i> of the Senate presides over the joint session; provides that if the President <i>pro tempore</i> is a candidate for President or Vice President the next most senior member of the majority party in the Senate who is not a candidate for President or Vice President shall preside over the joint session.</li> <li>● Specifies that the Vice President and the presiding officer have no power to resolve disputes over the list of Electors, the validity of Electors, or the validity of their votes.</li> <li>● Details procedures for opening, tallying, and counting electoral votes received from the States.</li> <li>● Provides specified limited circumstances under which</li> </ul>

<i>Electoral Count Modernization Act</i>	Existing Law	Summary of Provisions
		<p>members of Congress might object to an Elector or electoral vote.</p> <ul style="list-style-type: none"> <li>● Requires one-third of the members of each chamber to sign an objection before it can be heard.</li> <li>● Requires three-fifths of the members of both chambers to affirmatively vote to sustain an objection.</li> </ul>
§ 2(a)(10)	§ 16. Recesses, Reconvening, and Dissolution of Joint Meeting.	<ul style="list-style-type: none"> <li>● Provides seating for the presiding officer.</li> <li>● Specifies that the joint session may recess only for the chambers to act separately on objections.</li> </ul>
§ 2(a)(11)	§ 17. Limit on Debate on Objections.	Strikes section 17 and combines with section 16.
§ 2(a)(11)	§ 18. Parliamentary Procedure at Joint Meeting.	Strikes section 18 and combines with section 16.
N/A	§ 19. Vacancy in Offices of Both President and Vice President; Officers Eligible to Act.	No change to current law.
N/A	§ 20. Resignation or Refusal of Office.	No change to current law.
§ 2(a)(12)	§ 21. Definitions.	Updates definitions to define “chief State election official” and “election day,” and to ensure that the definition of “State” includes the District of Columbia, and the definition of “Governor” includes the mayor of the District of Columbia.

<i>Electoral Count Modernization Act</i>	Existing Law	Summary of Provisions
§ 3	<b>3 USC 102 note (Section 3(c) of the Presidential Transition Act of 1963)</b>	<ul style="list-style-type: none"> <li>● Clarifies that the Administrator of the General Services Administration (GSA) announces the apparent winner of the presidential election for the purposes of beginning GSA support for a transition. <ul style="list-style-type: none"> <li>○ The apparent winner may be announced at any time, but not later than the earlier of (1) enough states certifying their presidential elections to determine the apparent winner, or (2) December 20.</li> </ul> </li> <li>● Allows the GSA to provide support to the two candidates with the most pledged Electors if there is no apparent winner the third Tuesday after Election Day. <ul style="list-style-type: none"> <li>○ Requires GSA to terminate transition support for the losing candidate if any candidate receives a majority of pledged Electors, or if a candidate is declared the winner after electoral votes are counted in Congress.</li> </ul> </li> </ul>