

Fifty-seventh  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1048

Introduced by

Legislative Council

(Judiciary Committee)

1 A BILL for an Act to amend and reenact section 16.1-05-06 of the North Dakota Century Code,  
2 relating to challenging the right of a person to vote.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 16.1-05-06 of the 1999 Supplement to the North  
5 Dakota Century Code is amended and reenacted as follows:

6 **16.1-05-06. Challenging right of person to vote - Affidavit required - Penalty for**  
7 **false swearing - Optional poll checkers.**

- 8 1. One poll challenger appointed by the district chairman of each political party  
9 represented on the election board is entitled to be in attendance at each polling  
10 place. Individual poll challengers may be replaced at any time during the hours of  
11 voting, but no more than one poll challenger from each political party is entitled to  
12 be in attendance at each polling place at any one time.
- 13 2. ~~The members~~ Any member of the election board ~~and poll challengers~~ may  
14 challenge the right of ~~anyone~~ an individual to vote whom they know or have reason  
15 to believe is not a qualified elector of the precinct. ~~Members~~ A poll challenger may  
16 request members of the election board ~~or poll challengers may~~ to challenge a  
17 ~~voter if~~ the right of an individual to vote whom they know or have reason to believe  
18 is not a qualified elector of the precinct. A challenge may be based upon any one  
19 of the following:
- 20 a. The ~~person~~ individual offering to vote does not meet the age or citizenship  
21 requirements.
- 22 b. The ~~person~~ name of the individual offering to vote ~~has never voted in the~~  
23 ~~precinct before~~ does not appear in the pollbook and the individual fails to  
24 provide reasonable evidence of residency in the precinct.

- 1           c. Except as provided in section 16.1-01-05, the ~~person~~ individual offering to  
2           vote physically resides outside of the precinct.
- 3           d. The ~~person~~ individual offering to vote does not meet the residency  
4           requirements provided in section 16.1-01-05.
- 5           3. If any ~~person~~ individual offering to vote is challenged by a ~~poll challenger or by a~~  
6           member of the election board, the challenged ~~person~~ individual, unless the  
7           challenge is withdrawn, shall ~~stand~~ move aside and may not vote unless the  
8           challenged ~~person~~ individual executes an affidavit, acknowledged before the  
9           election inspector, that the challenged ~~person~~ individual is a legally qualified  
10          elector of the precinct.
- 11          4. The affidavit must include:
- 12          a. The name and present address of the affiant and the address of the affiant at  
13          the time the affiant last voted.
- 14          b. The previous last name of the affiant if it was different when the affiant last  
15          voted.
- 16          c. A recitation of the qualifications for voting as set forth in section 16.1-01-04  
17          and the rules for determining residence.
- 18          d. Notice of the penalty for making a false affidavit and that the county auditor  
19          may verify the affidavit.
- 20          e. A place for the affiant to sign and swear to the affiant's qualifications as a  
21          voter.
- 22          f. A space to insert the page number of the pollbook on which the challenged  
23          voter's name appears along with the statement of the reason for the  
24          challenge.
- 25          5. Upon the completion of the affidavit and the marking of the ballot by the challenged  
26          individual, the election board member shall insert the marked ballot in an envelope,  
27          seal the envelope, and mark the envelope with the word "provisional". The  
28          election board member shall attach the affidavit to the envelope containing the  
29          provisional ballot. The affidavit must be numbered to correspond to the page  
30          number on which the voter's name appears in the pollbook and must also include a  
31          statement of the reason for the challenge. The provisional voter's name must also

1           be marked in the pollbook as a provisional voter. A challenged individual who has  
2           completed an affidavit and whose ballot has been designated as provisional  
3           according to this subsection has until the closing of the polls in the precinct to offer  
4           any additional information or proof to the election inspector supporting the  
5           challenged individual's qualifications to vote in the precinct. At any time before the  
6           closing of the polls in a precinct, if presented with sufficient information or proof to  
7           confirm a challenged individual's qualifications to vote in the precinct, an election  
8           inspector may withdraw the challenge and order the election board to open the  
9           provisional envelope containing the challenged individual's ballot and deposit the  
10           challenged individual's ballot into the ballot box. Before the meeting of the county  
11           canvassing board, the county auditor, with the assistance and advice of the state's  
12           attorney, shall review each completed affidavit along with the corresponding  
13           statement of the reason for the challenge and shall make a recommendation  
14           based upon the qualifications of electors in section 16.1-01-04 and the rules for  
15           determining residence in section 54-01-26 to the county canvassing board as to  
16           whether the challenged voter is qualified to vote in the precinct and whether the  
17           challenged voter's provisional ballot should be accepted and counted and  
18           canvassed by the county canvassing board or rejected. The county canvassing  
19           board shall review each recommendation made by the county auditor, and may  
20           consider each completed affidavit including the statement of the reason for the  
21           challenge, and accept or reject each provisional ballot based upon the  
22           qualifications of electors in section 16.1-01-04 and the rules for determining  
23           residence in section 54-01-26. The county canvassing board shall count those  
24           provisional ballots deemed acceptable by the board. Provisional ballots rejected  
25           by the county canvassing board must be preserved and retained with all  
26           corresponding materials for further review and consideration in case of a recount  
27           or an election contest. The decision of the county canvassing board, as it pertains  
28           to the counting of provisional ballots, is final, subject only to the recount and  
29           contesting provisions of chapter 16.1-16. An election board or county canvassing  
30           board shall take precautions to ensure that secrecy is maintained when opening  
31           and counting provisional ballots and shall proceed in the same manner as

1           prescribed for opening and counting absent voter's ballots in section 16.1-07-12.  
2           An otherwise properly completed provisional ballot may not be rejected because  
3           an election official failed to comply with any of the procedures required by this  
4           section. The county auditor shall report all known or suspected violations to the  
5           state's attorney for investigation and possible prosecution.

6           6. Written notice of the penalty for making a false affidavit and that the county auditor  
7           may verify the affidavits must also be prominently displayed at the polling place in  
8           a form prescribed by the secretary of state. Any person who falsely swears in  
9           order to vote is guilty of a class A misdemeanor and must be punished pursuant to  
10          chapter 16.1-01.

11          ~~6.~~ ~~The county auditor shall verify randomly at least ten percent of the affidavits signed~~  
12          ~~in the county and shall report all known or suspected violations to the state's~~  
13          ~~attorney for investigation and possible prosecution.~~

14          7. In addition to the poll challenger, not more than two poll checkers appointed by the  
15          district chairman of each political party represented on the election board may be  
16          in attendance at each polling place, provided such poll checkers do not interfere  
17          with the election process or with the members of the election board in the  
18          performance of their duties. The poll challengers and poll checkers must be  
19          qualified electors of the district in which they are assigned.

20          8. No poll challenger or checker may be a member of the election board.