

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2394

Introduced by

Senators Krebsbach, J. Lee, Nelson, Traynor

Representatives Froelich, Koppelman

1 A BILL for an Act to create and enact chapter 16.1-02 and two new sections to chapter 16.1-05
2 of the North Dakota Century Code, relating to providing a central voter file, verifying voter
3 eligibility, and creating precinct maps and precinct locators; to amend and reenact sections
4 16.1-01-04, 16.1-05-06, and 54-09-08 of the North Dakota Century Code, relating to
5 qualifications of voters, challenging voters, and fees received by the secretary of state; and to
6 provide a penalty.

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

8 **SECTION 1. AMENDMENT.** Section 16.1-01-04 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **16.1-01-04. Qualifications of electors.**

- 11 1. Every citizen of the United States who is: eighteen years or older; a resident of
12 this state; and has resided in the precinct at least thirty days next preceding any
13 election, except as otherwise provided in regard to residency in chapter 16.1-14, is
14 a qualified elector.
- 15 2. ~~Every~~ For the purposes of this title, every qualified elector ~~of the state~~ may have
16 only one ~~voting~~ residence, shown by an actual fixed permanent dwelling or
17 establishment.
- 18 3. ~~A person's voting~~ Except as otherwise provided in this section, an individual's
19 residence must be determined in accordance with the rules for determining
20 residency as provided in section 54-01-26.
- 21 4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by
22 ~~persons~~ individuals convicted and sentenced for treason or felony must be limited
23 according to chapter 12.1-33.

1 5. For the purposes of this title, an individual may not be deemed to have gained or
2 lost a residence solely by reason of the individual's presence or absence while
3 enrolled as a student at a college, university, or other postsecondary institution of
4 learning in this state.

5 6. For the purposes of this title, a member of the armed forces of the United States
6 may not be deemed to have gained or lost a residence in this state solely by
7 reason of the member being stationed on duty in this state.

8 7. For the purposes of this title, an individual may not be deemed to have lost
9 residence in the individual's precinct or in the state by reason of the individual
10 engaging in temporary government service or private employment outside the
11 individual's precinct or outside the state.

12 **SECTION 2.** Chapter 16.1-02 of the North Dakota Century Code is created and
13 enacted as follows:

14 **16.1-02-01. Permanent central voter file.** A permanent, centralized electronic data
15 base of voters, to be known as the central voter file, is established with the offices of the
16 secretary of state and county auditors linked together by a centralized statewide system. The
17 county auditor is chief custodian of the central voter file records in each county. The secretary
18 of state is responsible for maintaining the central voter file. The central voter file must be
19 accessible by the secretary of state and all county auditors for purposes of preventing and
20 determining voter fraud, making changes and updating the central voter file, and generating
21 information, including pollbooks, reports, inquiries, forms, and voter lists.

22 **16.1-02-02. Costs of creating and maintaining a central voter file.** The creation of
23 the central voter file and its maintenance through June 30, 2009, must be paid for with funds
24 from the state's election fund, provided the election fund contains adequate funding to create
25 and maintain the central voter file. The creation of the central voter file and its maintenance
26 through June 30, 2009, may not be paid for from funds in the secretary of state's budget, the
27 state's general fund, or from county funds. Beginning July 1, 2009, the office required to
28 perform the functions and duties of this chapter shall bear the costs incurred and the secretary
29 of state shall pay the costs of operating and maintaining the central voter file.

30 **16.1-02-03. Secretary of state to establish the central voter file with department of**
31 **transportation and county auditors.**

- 1 1. Before the primary election in 2004, the secretary of state shall establish the
2 central voter file in cooperation with the department of transportation and county
3 auditors.
- 4 2. The secretary of state shall establish the initial central voter file from records
5 maintained by the department of transportation. Each county auditor shall
6 compare the initial central voter file against all precinct pollbooks used in the
7 auditor's county during and created from the general elections in 2000 and 2002
8 and any reasonably reliable updates made by the county auditor since the general
9 elections in 2000 and 2002. Any individual contained in the initial central voter file
10 who voted at either the general election in 2000 or 2002 must be designated as
11 "active" in the initial central voter file. Any individual contained in the initial central
12 voter file who did not vote at either the general election in 2000 or 2002 must be
13 designated as "inactive" in the initial central voter file.
- 14 3. Each individual contained in the initial central voter file must be assigned a unique
15 identifier. An individual's unique identifier must be created from unique information
16 and data obtained from records maintained by the department of transportation
17 and the pollbooks from the general elections in 2000 and 2002. If it is not possible
18 to assign a unique identifier to an individual contained in the initial central voter file,
19 a unique identifier must be randomly generated and assigned to the individual.
- 20 4. The secretary of state shall adopt rules for generating and assigning a unique
21 identifier to each individual contained in the central voter file according to section
22 16.1-02-11 and subsection 3 of section 16.1-01-01.
- 23 5. When establishing the initial central voter file from the records maintained by the
24 department of transportation and the pollbooks from the general elections in 2000
25 and 2002, the secretary of state and county auditors shall attempt to correct
26 address errors and misspellings of names.

27 **16.1-02-04. Precinct boundaries changed - Change to the central voter file.** When
28 the boundaries of a precinct are changed, the county auditor shall immediately update the voter
29 records for that precinct in the central voter file to accurately reflect those changes.

30 **16.1-02-05. Entry of new voters into the central voter file - Query of the central**
31 **voter file for double voting - Verification by mail - Challenges - Post election verification.**

- 1 1. Within sixty days following an election, the county auditor shall enter the name and
2 required information of each individual who voted at the last election who is not
3 already contained in the central voter file and update any required information
4 requested and obtained at the last election for any individual contained in the
5 central voter file.
- 6 2. The secretary of state, with the assistance of the county auditors, within seventy
7 days following an election, shall query the central voter file to determine if any
8 individual voted more than once during the preceding election. The secretary of
9 state shall immediately notify the county auditor and state's attorney in each
10 affected county for further investigation.
- 11 3. The county auditor shall mail to a random sampling of individuals contained in the
12 central voter file a notice stating the individual's name and address as the name
13 and address appear in the central voter file. The random sampling must be
14 determined in the manner established by the secretary of state. The notice must
15 request the individual to notify the county auditor if there is any mistake in the
16 information.
- 17 4. Upon return of any nonforwardable mail from an election official, the county auditor
18 shall ascertain the name and address of that individual. If the individual is no
19 longer at the address recorded in the central voter file, the county auditor shall
20 designate the individual as "challenged" in the central voter file. An individual
21 designated as "challenged" shall comply with section 16.1-05-06 before being
22 allowed to vote at the next election in that precinct. If a notice mailed at least sixty
23 days after the return of the first nonforwardable mail is also returned by the postal
24 service, the county auditor shall designate the individual as "inactive" in the central
25 voter file.
- 26 5. Within ninety days after an election, the county auditor shall send the notice
27 provided for under subsection 3 to each individual who was challenged on election
28 day according to section 16.1-05-06. If a notice is returned as not deliverable, the
29 county auditor shall attempt to determine the reason for the return. A county
30 auditor who does not receive or obtain satisfactory proof of an individual's eligibility

to vote shall immediately notify the state's attorney to conduct an investigation of the individual's eligibility to vote in that election.

16.1-02-06. Reporting deceased individuals and changes of names - Changes to records in the central voter file.

1. The state health officer shall provide for the regular reporting to the secretary of state the name, city, date of birth, and county of residence, if available, of each individual eighteen years of age or older who has died while maintaining residence in this state since the last report. Within thirty days after receiving a report, the secretary of state shall designate each individual included in the report as "deceased" in the central voter file. The secretary of state shall prepare and distribute a list of individuals designated as "deceased" to each county auditor.
2. The state health officer shall provide for the regular reporting to the secretary of state the name, address, date of birth, and county of residence, if available, of each individual eighteen years of age or older whose name was changed by marriage since the last report. Within sixty days after receiving a report, the secretary of state shall make the name changes in the central voter file and notify by mail each individual whose name was changed that the individual's name has been changed accordingly in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.
3. After receiving notice of death of an individual who has died outside the county, the county auditor shall designate that individual as "deceased" in the central voter file. Notice must be in the form of a printed obituary or a written statement signed by an individual having knowledge of the death of the individual.

16.1-02-07. Reporting individuals placed under guardianship and changes of names - Changes to records in the central voter file.

1. The state court administrator shall provide for the regular reporting to the secretary of state the name, address, date of birth, and county of residence, if available, of each individual eighteen years of age or older who has been placed under a guardianship and as a result has been deprived of the legal right to vote since the last report. Within thirty days after receiving a report, the secretary of state shall designate each individual included in the report as "ineligible" in the central voter

1 file. The secretary of state shall prepare and distribute a list of individuals
2 designated as "ineligible" to each county auditor.

3 2. The state court administrator shall provide for the regular reporting to the secretary
4 of state the name, address, and date of birth, if available, of each individual
5 eighteen years of age or older whose legal right to vote has been restored by the
6 court since the last report. Within thirty days after receiving a report, the secretary
7 of state shall remove the "ineligible" designation of the individual in the central
8 voter file. The secretary of state shall prepare and distribute a list of those
9 individuals to each county auditor.

10 3. The state court administrator shall provide for the regular reporting to the secretary
11 of state the name, address, date of birth, and county of residence, if available, of
12 each individual eighteen years of age or older whose name was changed by
13 divorce or any order or decree of the court since the last report. Within sixty days
14 after receiving the report, the secretary of state shall make the name changes in
15 the central voter file and notify by mail each individual whose name was changed
16 that the individual's name has been changed accordingly in the central voter file.
17 The secretary of state shall prepare and distribute a list of those individuals to each
18 county auditor.

19 **16.1-02-08. Reporting incarcerations - Changes to records in the central voter**

20 **file.**

21 1. The director of the department of corrections and rehabilitation shall provide for the
22 regular reporting to the secretary of state the name, address, date of birth, date of
23 sentence, effective date of the sentence, and county in which the conviction
24 occurred, if available, of each individual who has been convicted of a felony and
25 incarcerated under the legal and physical custody of the department of corrections
26 and rehabilitation since the last report. Within thirty days after receiving a report,
27 the secretary of state shall designate each individual in the report as "ineligible" in
28 the central voter file. The secretary of state shall prepare and distribute a list of
29 those individuals to each county auditor.

30 2. The director of the department of corrections and rehabilitation shall provide for the
31 regular reporting to the secretary of state the name, address, and date of birth, if

1 available, of each individual previously convicted of and incarcerated for a felony
2 whose civil rights have been restored as provided in chapter 12.1-33 since the last
3 report. Within thirty days after receiving a report, the secretary of state shall
4 remove the "ineligible" designation of the individual in the central voter file. The
5 secretary of state shall prepare and distribute a list of those individuals to each
6 county auditor.

7 **16.1-02-09. Department of transportation to report updates to the secretary of**
8 **state - Changes to records in the central voter file.**

- 9 1. The department of transportation shall report regularly to the secretary of state any
10 relevant changes and updates to records maintained by the department of
11 transportation which may require changes and updates to be made to records of
12 individuals contained in the central voter file.
- 13 2. The county auditor may change the designation of individuals contained in the
14 central voter file whose change of address can be confirmed by the United States
15 postal service. The secretary of state may provide each county auditor with
16 periodic reports on any individual whose change of address can be confirmed by
17 the United States postal service.
- 18 3. If an individual makes a written request to the county auditor for removal of the
19 individual's record from the central voter file, the county auditor shall change the
20 designation of the individual contained in the central voter file to "inactive".
- 21 4. If a qualified elector makes a written request to the county auditor for inclusion in
22 the central voter file, the county auditor shall collect the required information from
23 the individual and add the individual's name to the central voter file with the
24 designation of "inactive".

25 **16.1-02-10. Posting voting history - Failure to vote - Individuals designated**
26 **"inactive".** Within ninety days after each election, each county auditor shall post the voting
27 history for each individual who voted in the election. After the close of the 2008 calendar year,
28 the secretary of state shall determine if any individual has not voted during the preceding four
29 years and shall change the status of each such individual to "inactive" in the central voter file.
30 The secretary of state shall prepare a report to each county auditor which contains the name of
31 each individual who has been designated as "inactive" in the central voter file. Although not

counted in an election, a late absentee ballot from an individual may not be used to designate an individual as "inactive" in the central voter file.

16.1-02-11. Secretary of state to adopt rules for the purpose of maintaining the central voter file. The secretary of state shall adopt rules and procedures according to subsection 3 of section 16.1-01-01 for the purpose of implementing this chapter and for updating and maintaining the central voter file. The rules must:

1. Provide for the establishment and maintenance of a central voter file.
2. Provide for the generation and assignment of a unique identifier to each individual contained in the central voter file.
3. Provide procedures for entering data into the central voter file.
4. Provide for any additional information to be requested of and obtained from an individual which is to be maintained in the central voter file, not already provided by law, but necessary for the proper administration of the central voter file.
5. Provide for the exchange of records maintained by the appropriate state and county agencies and officials for receiving regular reports regarding individuals and records of individuals contained in the central voter file.
6. Allow each county auditor and the secretary of state to add, modify, and delete information from the central voter file to ensure accurate and up-to-date records.
7. Allow each county auditor and the secretary of state to have access to the central voter file for review, search, and inquiry capabilities.
8. Provide security and protection of all information contained in the central voter file and to ensure that unauthorized access and entry is prohibited.
9. Provide a system for each county to identify the precinct to which an individual should be assigned for voting purposes.

16.1-02-12. Information contained and maintained in the central voter file. The central voter file must contain the following information for each individual included in the file:

1. The complete name of the individual.
2. The complete residential address of the individual.
3. The complete mailing address of the individual, if different from the individual's residential address.
4. The unique identifier generated and assigned to the individual.

- 1 5. A designation showing whether the individual's ability to vote in a precinct has
2 been inactivated as a result of death, incarceration, or because of a change in
3 guardianship status, or because the individual is no longer a resident of the
4 precinct according to section 16.1-01-04.
- 5 6. A designation showing whether the individual must be challenged according to
6 section 16.1-05-06.
- 7 7. The county, legislative district, precinct name, and precinct number in which the
8 individual resides.
- 9 8. Beginning in 2008, four years of an individual's voting history, if applicable.
- 10 9. Any other information requested of and obtained from the individual deemed
11 necessary by the secretary of state for the proper maintenance of the central voter
12 file.

13 **16.1-02-13. Information contained in pollbooks generated from the central voter**

14 **file.** The county auditor shall generate a pollbook for each precinct in the county from the
15 central voter file by the fifteenth day before an election. Between the fifteenth day before the
16 election and the day of the election, no changes or updates to records of individuals contained
17 in the central voter file or a pollbook generated from the central voter file may be made, other
18 than changes related to the status of an individual voting early or an individual requesting and
19 returning an absent voter's ballot. The secretary of state shall prescribe procedures for
20 generating pollbooks and for transporting the pollbooks to the election judges for use on
21 election day. Pollbooks generated from the central voter file must contain the following
22 information for each individual contained therein:

- 23 1. The complete name of the individual.
- 24 2. The complete residential address of the individual.
- 25 3. The unique identifier generated and assigned to the individual.
- 26 4. A designation showing whether the individual's ability to vote in a precinct has
27 been inactivated as a result of death, incarceration, or because of a change in
28 guardianship status, or because the individual is no longer a resident of the
29 precinct according to section 16.1-01-04.
- 30 5. A designation showing whether the individual must be challenged according to
31 section 16.1-05-06.

6. The county, legislative district, precinct name, and precinct number in which the individual resides.

7. Any other information requested of and obtained from the individual deemed necessary by the secretary of state for the proper maintenance of the pollbook.

16.1-02-14. Voter lists and reports to be made available for jury management. By February first of each year, the secretary of state shall transmit information from the central voter file to the state court administrator for the purpose of compiling the master list of jurors under chapter 27-09.

16.1-02-15. Voter lists and reports may be made available for election related purposes - Funds received. Except as otherwise provided by law, a voter list or a report generated from the central voter file may be made available to a candidate, political party, or a political committee for election-related purposes. Any information obtained by a candidate, political party, or political committee for election-related purposes from a list or report generated from the central voter file may not be sold or distributed for a purpose that is not election-related. Except for information identified in the central voter file under subsections 1, 2, 3, 5, 7, and 8 of section 16.1-02-12, which may be made available to a candidate, political party, or political committee for election-related purposes, information in the central voter file is an exempt record. Any funds received by the secretary of state to pay the cost of producing a report or list of voters contained in the central voter file must be deposited in the secretary of state's general services operating fund.

16.1-02-16. Violations - Penalties.

1. An individual may not intentionally:

a. Remove an individual from the central voter file or change a record of an individual contained in the central voter file in a manner or for a purpose not authorized by law; or

b. Add a name of an individual to the central voter file or add a record of an individual contained in the central voter file in a manner or for a purpose not authorized by law.

2. A deputy, clerk, employee, or other subordinate of a county auditor who has knowledge or reason to believe that a violation of this chapter has occurred shall immediately transmit a report of the knowledge or belief to the county auditor,

1 together with any evidence of the violation. A county auditor who has knowledge
2 or reason to believe that a violation of this chapter has occurred shall immediately
3 transmit a report of the knowledge or belief to the state's attorney of the county
4 where the violation is believed to have occurred, together with any evidence of the
5 violation. The county auditor shall also immediately send a copy of the report to
6 the secretary of state.

- 7 3. An individual who intentionally violates any provision of this chapter is guilty of a
8 class A misdemeanor, unless a different penalty is specifically provided by law.

9 **SECTION 3. AMENDMENT.** Section 16.1-05-06 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **16.1-05-06. Challenging right of person to vote - Identification or affidavit**
12 **required - Penalty for false swearing - Optional poll checkers.**

- 13 1. One poll challenger appointed by the district chairman of each political party
14 represented on the election board is entitled to be in attendance at each polling
15 place. Individual poll challengers may be replaced at any time during the hours of
16 voting, but no more than one poll challenger from each political party is entitled to
17 be in attendance at each polling place at any one time.
- 18 2. ~~The members~~ Any member of the election board ~~and poll challengers~~ may
19 challenge the right of ~~anyone~~ an individual to vote ~~whom they know or have~~ if the
20 election board member has knowledge or has reason to believe the individual is
21 not a qualified elector. ~~Members~~ A poll challenger may request members of the
22 election board ~~or poll challengers may~~ to challenge a voter if they know or have
23 the right of an individual to vote if the poll challenger has knowledge or has reason
24 to believe the individual is not a qualified elector of the precinct. A challenge may
25 be based upon any one of the following:
- 26 a. The ~~person~~ individual offering to vote does not meet the age or citizenship
27 requirements.
- 28 b. The ~~person~~ individual offering to vote has never voted in the precinct before,
29 the name of the individual offering to vote does not appear in the pollbook
30 generated from the central voter file, and the individual fails to provide
31 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~~ 16.1-01-04.
- 5 3. ~~A poll-challenger or~~ If after an election board member ~~may request~~ has requested
6 that the ~~person~~ individual offering to vote provide an appropriate form of
7 identification to address any of the voting eligibility concerns listed in subsection 2:
8 ~~If and~~ the identification provided does not adequately ~~resolve~~ confirm the ~~voter~~
9 eligibility ~~concerns of the poll-challenger or election board member of the~~
10 challenged individual, the challenged ~~person~~ individual may not vote unless the
11 challenged ~~person~~ individual executes an affidavit, acknowledged before the
12 election inspector, that the challenged ~~person~~ individual is a legally qualified
13 elector of the precinct.
- 14 4. The affidavit must include:
- 15 a. The name and present address of the affiant and the address of the affiant at
16 the time the affiant last voted.
- 17 b. The previous last name of the affiant if it was different when the affiant last
18 voted.
- 19 c. A recitation of the qualifications for voting as set forth in section 16.1-01-04
20 and the rules for determining residence.
- 21 d. Notice of the penalty for making a false affidavit and that the county auditor
22 may verify the affidavit.
- 23 e. A place for the affiant to sign and swear to the affiant's qualifications as a
24 voter.
- 25 5. Written notice of the penalty for making a false affidavit and that the county auditor
26 may verify the affidavits must also be prominently displayed at the polling place in
27 a form prescribed by the secretary of state. ~~Any person~~ An individual who falsely
28 swears in order to vote is guilty of a class A misdemeanor and must be punished
29 pursuant to chapter 16.1-01.

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

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

~~8.~~ 7. No poll challenger or checker may be a member of the election board.

8. The district chairman shall notify the county auditor of each county contained in the legislative district before the third day before the day of the election of the names of individuals whom the district chairman has appointed to serve as poll challengers and poll checkers in the precincts in the legislative district.

SECTION 4. A new section to chapter 16.1-05 of the North Dakota Century Code is created and enacted as follows:

Poll clerks to check identification and verify eligibility - Poll clerks to request, correct, and update incorrect information contained in the pollbook.

1. Before delivering a ballot to an individual according to section 16.1-13-22, the poll clerks shall request the individual to show a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state which displays the individual's date of birth. After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address.

2. If the individual's name is not contained in the pollbook generated from the central voter file, the individual may be challenged according to section 16.1-05-06 and the individual's name must be recorded in the pollbook. The poll clerks shall request and obtain any additional information for the individual required to be included in the pollbook.

1 3. When verifying an individual's eligibility or when entering the name of an individual
2 into the pollbook, poll clerks shall request, correct, and update any incorrect or
3 incomplete information about an individual that is required to be contained in the
4 pollbook generated from the central voter file.

5 4. Poll clerks shall direct an individual who is attempting to vote in the incorrect
6 precinct to the proper precinct and voting location.

7 **SECTION 5.** A new section to chapter 16.1-05 of the North Dakota Century Code is
8 created and enacted as follows:

9 **County auditor to provide election board members with precinct maps or precinct**
10 **finder.** The county auditor shall provide each precinct election board with an accurate precinct
11 map or precinct finder to assist the election board member in determining whether an address
12 is located in that precinct and for determining which precinct and polling location to which to
13 direct an individual who may be attempting to vote incorrectly in that precinct.

14 **SECTION 6. AMENDMENT.** Section 54-09-08 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **54-09-08. Secretary of state's general services operating fund.** The secretary of
17 state's general services operating fund is a special fund in the state treasury. Moneys in the
18 fund are to be used pursuant to legislative appropriations for the provision of services under
19 section 16.1-02-15, subsection 6 of section 41-09-94, subsection 9 of section 54-09-04, and
20 sections 54-09-10 and 54-09-11. At the close of each fiscal year, the secretary of state shall
21 transfer any unobligated balance remaining in the fund exceeding seventy-five thousand dollars
22 to the general fund.