

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the  
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,  
one thousand nine hundred and ninety-nine**

HOUSE BILL NO. 1149  
(Political Subdivisions Committee)  
(At the request of the Secretary of State)

AN ACT to amend and reenact sections 16.1-01-05, 16.1-05-06, 16.1-07-08, 44-02-01, and 58-04-09 of the North Dakota Century Code, relating to voting by an elector moving from one precinct to another, procedures for challenging voters and voters who apply for absent voter's ballots, and when vacancies in office occur.

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

**SECTION 1. AMENDMENT.** Section 16.1-01-05 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-01-05. Voting by qualified elector moving from one precinct to another.** ~~Where~~ If a qualified elector moves from one precinct to another precinct within this state, the ~~person~~ elector is entitled to vote in the precinct from which the ~~person~~ elector moved until the ~~person~~ elector has established a new ~~voting~~ residence pursuant to section 16.1-01-04.

**SECTION 2. AMENDMENT.** Section 16.1-05-06 of the North Dakota Century Code is amended and reenacted as follows:

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

1. One poll challenger appointed by the district chairman of each political party represented on the election board is entitled to be in attendance at each polling place. Individual poll challengers may be replaced at any time during the hours of voting, but no more than one poll challenger from each political party is entitled to be in attendance at each polling place at any one time.
2. The members of the election board and poll challengers may challenge the right of anyone to vote whom they know or have reason to believe is not a qualified elector. Members of the election board or poll challengers may challenge a voter if they know or have reason to believe any of the following:
  - a. The person offering to vote does not meet the age or citizenship requirements.
  - b. The person offering to vote has never voted in the precinct before and fails to provide reasonable evidence of residency in the precinct.
  - c. Except as provided in section 16.1-01-05, the person offering to vote physically resides outside of the precinct.
  - d. The person offering to vote does not meet the residency requirements provided in section 16.1-01-05.
3. If any person offering to vote is challenged by a poll challenger or by a member of the election board, the challenged person, unless the challenge is withdrawn, shall stand aside and may not vote unless the challenged person executes an affidavit, acknowledged before the election inspector, that the challenged person is a legally qualified elector of the precinct.
4. The affidavit must include the:

- a. The name and present address of the affiant and the address of the affiant at the time the affiant last voted.
  - b. The previous last name of the affiant if it was different when the affiant last voted.
  - c. A recitation of the qualifications for voting as set forth in section 16.1-01-04 and the rules for determining residence.
  - d. Notice of the penalty for making a false affidavit and that the county auditor may verify the affidavit.
  - e. A place for the affiant to sign and swear to the affiant's qualifications as a voter.
5. Written notice of the penalty for making a false affidavit and that the county auditor ~~will~~ may verify the affidavits must also be prominently displayed at the polling place in a form prescribed by the secretary of state. Any person who falsely swears in order to vote is guilty of ~~an offense~~ a class A misdemeanor and must be punished 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.
- ~~2.~~ 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 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.
- ~~3.~~ 8. No poll challenger or checker may be a member of the election board.

**SECTION 3. AMENDMENT.** Section 16.1-07-08 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-08. Delivering ballots - Envelope accompanying - Statement on envelope - Challenging electors voting by absentee ballot - Inability of elector to sign name.**

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been prepared, the county auditor, city auditor, or business manager of the school district, as the case may be, shall send to the absent voter by mail, at the expense of the political subdivision conducting the election, one official ballot, or personally deliver the ballot to the applicant or the applicant's agent, which agent may not, at that time, be a candidate for any office to be voted upon by the absent voter. The agent shall sign the agent's name before receiving the ballot and deposit with the auditor or business manager of the school district, as the case may be, authorization in writing from the applicant to receive the ballot or according to requirements set forth for signature by mark. No person may receive compensation, including money, goods, or services, for acting as an agent for an elector, nor may a person act as an agent for more than four electors in any one election. A voter voting by absentee ballot may not require the political subdivision providing the ballot to bear the expense of the return postage for an absentee ballot.
2. If there is more than one ballot to be voted by an elector of the precinct, one of each kind must be included and an envelope must be enclosed with the ballot or ballots. The front of the envelope must bear the official title and post-office address of the officer supplying the voter with the ballot and upon the other side a printed statement in substantially the following form:

Precinct \_\_\_\_\_  
Name \_\_\_\_\_

Residential Address \_\_\_\_\_  
City \_\_\_\_\_ ND Zip Code \_\_\_\_\_  
Under penalty of possible criminal prosecution for making a false statement, I swear that ~~the above residential address is my address for voting purposes~~ I reside at the residential address provided above, that I have resided in my precinct for at least thirty days, and this is the only ballot I will cast in this election.  
Applicant's Signature \_\_\_\_\_  
Date \_\_\_\_\_

If the absent voter is unable to sign the voter's name, the voter shall mark (X) that statement in the presence of a disinterested person. The disinterested person shall print the name of the person marking the X below the X and shall sign that person's own name following the printed name with the notation "witness to the mark".

3. The county auditor, city auditor, or business manager of the school district, as the case may be, may challenge the right of anyone to vote an absent voter's ballot whom that officer knows or has reason to believe is not a qualified elector. When challenging a voter who has applied for an absentee voter's ballot, the election official shall follow the procedures and use the affidavit provided for in section 16.1-05-06 and include a voter's affidavit with the outgoing absentee voter's ballot along with an explanation that the voter's right to vote is being challenged and that the voter's affidavit must be completed and returned with the voter's absentee voter's ballot to be accepted.

**SECTION 4. AMENDMENT.** Section 44-02-01 of the North Dakota Century Code is amended and reenacted as follows:

**44-02-01. Vacancies - Causes thereof.** An office becomes vacant if the incumbent shall:

1. Die in office;
2. Be adjudged mentally ill;
3. Resign from office;
4. Be removed from office;
5. Fail to discharge the duties of ~~his~~ office, when ~~such~~ the failure has continued for sixty consecutive days, except when prevented from discharging ~~such~~ the duties by reason of ~~his~~ the person's service in the armed forces of the United States, by sickness, or by other unavoidable cause; ~~provided, however, that.~~ However, as to any office which under the law the vacancy must be filled by the governor, the governor for good cause shown may extend the period, which the incumbent may be absent, for an additional period of sixty days. No remuneration on account of such office may be paid to an absentee officeholder during ~~his~~ that person's absence, and ~~such~~ the office in all cases becomes vacant upon the termination of the term for which ~~he~~ the person was elected or appointed;
6. Fail to qualify as provided by law;
7. Cease to be a resident of the state, district, county, or ~~township~~ other political subdivision in which the duties of the office are to be discharged, or for which ~~he~~ the person may have been elected;
8. Be convicted of a felony or any offense involving moral turpitude or a violation of ~~his~~ the person's official oath;
9. Cease to possess any of the qualifications of office prescribed by law; or
10. Have ~~his~~ the person's election or appointment declared void by a competent tribunal.

**SECTION 5. AMENDMENT.** Section 58-04-09 of the North Dakota Century Code is amended and reenacted as follows:

**58-04-09. Challenge to voter - Duty of judges.** If any person offering to vote at any election or upon any question arising at a township meeting is challenged as unqualified using the criteria provided in section 16.1-05-06, the judges shall proceed in the manner in which judges at a general election are required to proceed, adapting the affidavit described in section 16.1-05-06 to the circumstances of the township meeting.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1149.

House Vote:      Yeas    75      Nays    21      Absent    2

Senate Vote:    Yeas    45      Nays    3      Absent    1

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 1999,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State