

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

HOUSE BILL NO. 1369

(Representatives Carlson, Rick C. Becker, Boehning, Kasper, K. Koppelman, Louser, D. Ruby)
(Senators Casper, Laffen, Poolman, Unruh, Wardner)

AN ACT to create and enact sections 16.1-01-04.1 and 16.1-01-04.2, a new subsection to section 39-06-03.1, and a new subsection to section 39-06-14 of the North Dakota Century Code, relating to identification and residency requirements for electors and identification cards; to amend and reenact sections 16.1-01-04, 16.1-01-12, 16.1-02-09, 16.1-05-07, 16.1-07-06, 16.1-15-08, 16.1-15-19, and 39-06-07.1 of the North Dakota Century Code, relating to qualifications of electors, responsibilities of election officials before issuing ballots, elector identification requirements, identification cards, and operator's licenses; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

16.1-01-04. Qualifications of electors - Voting requirements.

1. ~~Every~~To qualify as an elector of this state, an individual must be:
 - a. ~~A~~ A citizen of the United States ~~who is eighteen;~~
 - b. ~~Eighteen~~ Eighteen years or older; ~~and~~
 - c. ~~A~~ A resident of this state; ~~and who~~ who has resided in the precinct at least thirty days ~~next~~immediately preceding any election, ~~except as otherwise provided in regard to residency in chapter 16.1-14, is a qualified elector.~~
2. ~~For the purposes of this title, every qualified elector may have only one residence, shown by an actual fixed permanent dwelling, establishment, or any other abode.~~
3. ~~Except as otherwise provided in this section, an individual's residence must be determined in accordance with the rules for determining residency as provided in section 54-01-26.~~
4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by individuals convicted and sentenced for a felony must be limited according to chapter 12.1-33.
5. ~~For the purposes of this title, an individual may not be deemed to have gained or lost a residence solely by reason of the individual's presence or absence while enrolled as a student at a college, university, or other postsecondary institution of learning in this state.~~
6. ~~For the purposes of this title, a member of the armed forces of the United States may not be deemed to have gained or lost a residence in this state solely by reason of the member being stationed on duty in this state.~~
7. ~~For the purposes of this title, an individual may not be deemed to have lost residence in the individual's precinct or in the state by reason of the individual engaging in temporary government service or private employment outside the individual's precinct or outside the state.~~

- ~~8.3.~~ For purposes of this title, ~~a~~A qualified elector may not authorize an attorney in fact, guardian, or other individual to apply for any ballot or to vote in any election on behalf of or in the place of the qualified elector.
- ~~9.4.~~ For purposes of this title, ~~an~~An elector seeking to vote in an election must meet the identification requirements specified in sections ~~16.1-05-07~~ and ~~16.1-07-06~~section 16.1-01-04.1.

SECTION 2. Section 16.1-01-04.1 of the North Dakota Century Code is created and enacted as follows:

16.1-01-04.1. Identification verifying eligibility as an elector.

1. A qualified elector shall provide a valid form of identification to the proper election official before receiving a ballot for voting.
2. The identification must provide the following information regarding the elector:
 - a. Legal name;
 - b. Current residential street address in North Dakota; and
 - c. Date of birth.
3. a. A valid form of identification is:
 - (1) A driver's license or nondriver's identification card issued by the North Dakota department of transportation; or
 - (2) An official form of identification issued by a tribal government to a tribal member residing in this state.
- b. If an individual's valid form of identification does not include all the information required under subsection 2 or the information on the identification is not current, the identification must be supplemented by presenting any of the following issued to the individual which provides the missing or outdated information:
 - (1) A current utility bill;
 - (2) A current bank statement;
 - (3) A check issued by a federal, state, or local government;
 - (4) A paycheck; or
 - (5) A document issued by a federal, state, or local government.
4. The following forms of identification are valid for the specified individuals living under special circumstances who do not possess a valid form of identification under subsection 3.
 - a. For an individual living in a long-term care facility, a long-term care certificate prescribed by the secretary of state and issued by a long-term care facility in this state;
 - b. For a uniformed service member or immediate family member temporarily stationed away from the individual's residence in this state, or a resident of the state temporarily living outside the country, a current military identification card or passport; and
 - c. For an individual living with a disability that prevents the individual from traveling away from the individual's home, the signature on an absentee or mail ballot application from another qualified elector who, by signing, certifies the applicant is a qualified elector.

5. If an individual is not able to show a valid form of identification but asserts qualifications as an elector in the precinct in which the individual desires to vote, the individual may mark a ballot that must be securely set aside in a sealed envelope designed by the secretary of state. After the ballot is set aside, the individual may show a valid form of identification to either a polling place election board member if the individual returns to the polling place before the polls close, or to an employee of the office of the election official responsible for the administration of the election before the meeting of the canvassing board occurring on the sixth day after the election. Each ballot set aside under this subsection must be presented to the members of the canvassing board for proper inclusion or exclusion from the tally.
6. The secretary of state shall develop uniform procedures for the requirements of subsection 5 which must be followed by the election official responsible for the administration of the election.

SECTION 3. Section 16.1-01-04.2 of the North Dakota Century Code is created and enacted as follows:

16.1-01-04.2. Residence for voting - Rules for determining.

For purposes of voting:

1. Every qualified elector may have only one residence, shown by an actual fixed permanent dwelling, establishment, or any other abode to which the individual returns when not called elsewhere for labor or other special or temporary purposes.
2. The street address verified by the individual as provided in section 16.1-01-04.1 when requesting a ballot to vote must be the address of residence for the individual.
3. An individual retains a residence in this state until another has been gained.
4. The acts of residing at a new address for thirty days and verifying that address as provided under section 16.1-01-04.1 constitute a change in the individual's voting residence.

SECTION 4. AMENDMENT. Section 16.1-01-12 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-12. Election offenses - Penalty.

1. It is unlawful for an individual, measure committee as described in section 16.1-08.1-01, or other organization to:
 - a. Fraudulently alter another individual's ballot or substitute one ballot for another or to otherwise defraud a voter of that voter's vote.
 - b. Obstruct a qualified elector on the way to a polling place.
 - c. Vote ~~or offer to vote~~ more than once in any election.
 - d. Knowingly vote in the wrong election precinct or district.
 - e. Disobey the lawful command of an election officer as defined in chapter 16.1-05.
 - f. Knowingly exclude a qualified elector from voting or knowingly allow an unqualified person to vote.
 - g. Knowingly vote when not qualified to do so.
 - h. Sign an initiative, referendum, recall, or any other election petition when not qualified to do so.

- i. Circulate an initiative, referendum, recall, or any other election petition not in its entirety or circulate such a petition when unqualified to do so.
 - j. Pay or offer to pay any individual, measure committee, or other organization, or receive payment or agree to receive payment, on a basis related to the number of signatures obtained for circulating an initiative, referendum, or recall petition. This subsection does not prohibit the payment of salary and expenses for circulation of the petition on a basis not related to the number of signatures obtained, as long as the circulators file their intent to remunerate prior to submitting the petitions and, in the case of initiative and referendum petitions, fully disclose all contributions received pursuant to chapter 16.1-08.1 to the secretary of state upon submission of the petitions. The disclosure of contributions received under this section does not affect the requirement to file a pre-election report by individuals or organizations soliciting or accepting contributions for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly under chapter 16.1-08.1. Any signature obtained in violation of this subdivision is void and may not be counted.
 - k. Willfully fail to perform any duty of an election officer after having accepted the responsibility of being an election officer by taking the oath as prescribed in this title.
 - l. Willfully violate any rule adopted by the secretary of state pursuant to this title.
 - m. Willfully make any false canvass of votes, or make, sign, publish, or deliver any false return of an election, knowing the same to be false, or willfully deface, destroy, or conceal any statement or certificate entrusted to the individual's or organization's care.
 - n. Destroy ballots, ballot boxes, election lists, or other election supplies except as provided by law.
 - o. Sign a name other than that individual's own name to an initiative, referendum, recall, or any other election petition.
2.
 - a. A violation of subdivisions ab, e, f, or h through l of subsection 1 is a class A misdemeanor.
 - b. A violation of ~~subdivisions~~ subdivisions a, c, d, g, or m of subsection 1 is a class C felony.
 - c. A violation of subdivision n of subsection 1 occurring after an election but before the final canvass, or during an election, is a class C felony, and in other cases is a class A misdemeanor.
 - d. A violation of subdivision o of subsection 1 is a class A misdemeanor if an individual signs one or two names other than the individual's own name to a petition and is a class C felony if an individual signs more than two names other than the individual's own name to a petition.
 - e. An organization, as defined in section 12.1-03-04, that violates this section is subject to the organizational fines in section 12.1-32-01.1. The court in which the conviction is entered shall notify the secretary of state of the conviction and shall order the secretary of state to revoke the certificate of authority of any convicted organization or limited liability company. The organization may not reapply to the secretary of state for authorization to do business under any name for one year upon conviction of a class A misdemeanor and for five years upon conviction of a class C felony under this section.
 - f. An individual who is a member of an organization may be convicted of a violation as an accomplice under section 12.1-03-01.

3. Every act which by this chapter is made criminal when committed with reference to the election of a candidate is equally criminal when committed with reference to the determination of a question submitted to qualified electors to be decided by votes cast at an election.

SECTION 5. AMENDMENT. Section 16.1-02-09 of the North Dakota Century Code is amended and reenacted as follows:

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

4. The department of transportation shall report regularly to the secretary of state any relevant changes and updates to records maintained by the department of transportation which may require changes and updates to be made to records of individuals contained in the central voter file.

2. ~~The county auditor may change the designation of individuals contained in the central voter file whose change of address can be confirmed by the United States postal service. The secretary of state may provide each county auditor with periodic reports on any individual whose change of address can be confirmed by the United States postal service.~~
3. ~~If a qualified elector makes a written request to the county auditor for inclusion in the central voter file, the county auditor shall collect the required information from the individual and add the individual's name to the central voter file with the designation of "active" The report must include the individual's:~~
 1. Complete legal name, including both previous and current names if changed;
 2. Complete residential address, including both previous and current residential addresses if changed;
 3. Complete mailing address, including both previous and current mailing addresses if changed;
 4. Driver's license or nondriver identification number, including both previous and current numbers if changed; and
 5. Citizenship status, including both previous and current citizenship status if changed.

SECTION 6. AMENDMENT. Section 16.1-05-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-07. 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 in any election, the poll clerks shall require the individual to show identification, which includes the individual's residential address and date of birth. The valid forms of identification are:~~
 - a. ~~A current driver's license or nondriver identification card issued by the department of transportation;~~
 - b. ~~An official form of identification issued by a tribal government;~~
 - c. ~~A long-term care certificate prescribed by the secretary of state, if the individual does not possess an official form of identification provided for under subdivision a or b; or~~
 - d. ~~For a uniformed service member or a qualifying family member temporarily stationed away from the individual's residence in the state or a qualified elector temporarily living outside the country, a current military identification card or passport if the individual does not possess an official form of identification provided for under subdivision a or b a valid form of identification with the information required under section 16.1-01-04.1.~~

2. a. When verifying an individual's eligibility or when entering the name of an individual into the pollbook, poll clerks shall request, correct, and update any incorrect or incomplete information about an individual required to be included in the pollbook generated from the central voter file.
 - b. If the individual's name is contained in the pollbook generated from the central voter file, the poll clerks shall verify the individual's residential address and mailing address, ~~if different from the individual's residential address.~~
 - c. If the individual's name is not contained in the pollbook generated from the central voter file but the individual is determined eligible to vote, the poll clerks shall record the individual's name in the pollbook. The poll clerks shall request and obtain any additional information for the individual required to be included in the pollbook and the central voter file.
3. Poll clerks shall direct an individual who is attempting to vote in the incorrect precinct or who does not meet the thirty-day residency requirement to the proper precinct and ~~voting location~~polling place.

SECTION 7. AMENDMENT. Section 16.1-07-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-06. Application form.

1. Application for an absent voter's or mail ballot must be made on a form, prescribed by the secretary of state, to be furnished by the proper officer of the county, city, or school district in which the applicant is an elector, on any form, approved by the secretary of state, or any blank containing the following:
 - a. The applicant's name.
 - b. The applicant's current or most recent North Dakota residential address.
 - c. The applicant's mailing address.
 - d. The applicant's current contact telephone number, if available.
 - e. The election for which the ballot is being requested.
 - f. The date of the request.
 - g. An affirmation that the applicant has resided, or will reside, in the precinct for at least thirty days next preceding the election and will be a qualified elector of the precinct.
 - h. The applicant's signature.
 - i. ~~A space for the voter to indicate the voter's~~The designation of the individual's status as a citizen of this country and resident of this state living outside the United States, a uniformed service member living away from the voter's individual's North Dakota residence, or an immediate family member of the uniformed service member living away from the voter's individual's North Dakota residence.
 - j. The applicant's birth ~~date and year~~date of birth.
 - k. ~~As provided in subsection 1 of section 16.1-05-07, the~~The identification number from one of the applicant's valid forms of identification or, a copy of the applicant's long-term care certificate, and, if necessary, a copy of the applicant's supplemental identification under section 16.1-01-04.1.

2. If the applicant is unable to sign the applicant's name to the application, the applicant shall mark (X) or use the applicant's signature stamp on the application in the presence of a disinterested individual. The disinterested individual shall print the name of the individual marking the X or using the signature stamp below the X or signature stamp and shall sign the disinterested individual's own name following the printed name together with the notation "witness to the mark".
3. If the applicant does not possess or cannot secure an approved form of identification as provided for under ~~subsection 1 of section 16.1-05-07~~section 16.1-01-04.1 due to a disability with which the individual lives and which prevents the individual from traveling to obtain, the application also must be signed by another qualified elector who, by signing, certifies that the applicant is a qualified elector. The secretary of state shall prescribe the form of the certification required under this subsection. An individual may not certify the qualifications of more than four applicants in an election.
4. The application for a ~~qualified elector serving on active duty as a uniformed service member or an immediate family member who is a qualified elector and stationed at a location other than that individual's voting residential address~~temporarily stationed away from the individual's residence in this state, or a resident of the state temporarily living outside the country must include the following additional information if the ~~voter desires to vote by facsimile or electronic mail~~individual desires to access the ballot by electronic means:
 - a. Facsimile telephone number; or
 - b. Electronic mail address.
5. ~~The application for a qualified elector living outside the United States must include a facsimile telephone number or electronic mail address if the voter desires to vote by facsimile or electronic mail.~~An incomplete application must be returned to the applicant for completion and resubmission.
6. Except for the applicant's date of birth and ~~motor vehicle driver's license or nondriver identification card number, and any supplemental documentation provided under~~section 16.1-01-04.1, the application is an open record under section 44-04-18.

SECTION 8. AMENDMENT. Section 16.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-08. Wrapping and returning of ballots to county recorder - Ballots set aside to election official administering the election.

1. After generating the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the election board shall cause the ballots containing lawful write-in votes cast at the election to be placed in a suitable wrapper to form a complete wrapper for the ballots. All ballots without write-in votes shall be wrapped in a similar manner. The ballots and wrappers must then be tightly secured at the outer end to completely envelop and hold the ballots together. Ballots that are void must be secured in a separate wrapper and must be marked "void". Ballots that are spoiled must be separately secured and marked "spoiled". In sealing ballots, the various classes of ballots must be kept separate. Each wrapper must be endorsed with the names or numbers of the precincts and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the county auditor so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned in person to the county recorder. At the meeting of the county canvassing board, the county recorder shall deliver the ballots containing lawful write-in votes from all the precincts within the county if these votes were not canvassed by the polling place election board on election night according to section 16.1-12-02.2. At the meeting of the county

canvassing board, the county recorder shall deliver each ballot that may contain a write-in vote referenced in a demand made under subsection 1 of section 16.1-12-02.2. Ballots used with any electronic voting system or counted by an electronic counting machine must be sealed and returned as provided in this section.

2. Each ballot within a sealed envelope set aside for an individual who was unable to provide a valid form of identification when appearing to vote in the election must be delivered to the election official responsible for the administration of the election so the envelope containing the ballot is available if the individual for whom the ballot was set aside appears in the official's office to verify the individual's eligibility as an elector. The verified and unverified ballots set aside must be delivered to the members of the canvassing board for proper inclusion or exclusion from the canvass of votes.

SECTION 9. AMENDMENT. Section 16.1-15-19 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-19. County canvassing board to disregard technicalities, misspelling, and abbreviations - Ballots set aside - Write-in votes canvassed - Votes from unestablished precincts disregarded.

In canvassing the election returns, the county canvassing board shall disregard technicalities, misspelling, and the use of initial letters or abbreviations of the name of any candidate for office if it can be ascertained for whom the vote was intended. Pursuant to Under section 16.1-01-04.1, the board shall include in the canvass the votes from any ballot set aside and subsequently verified by the individual who marked the ballot, and review each envelope containing an unverified ballot forwarded to the board from the polling place election officials. The envelopes for all ballots set aside along with the envelopes containing uncounted ballots from unverified individuals must be kept with all other election materials for the required retention period under section 16.1-15-13. Under section 16.1-12-02.2, the board shall canvass all qualifying write-in votes. The board may not count votes polled in any place except at established precincts. The county canvassing board is authorized to initial all absentee ballots cast pursuant to section 16.1-07-09 that were not considered or counted by election boards and to make a final determination of eligibility for all ballots which were rejected at the various precincts in the county for the reasons provided in sections 16.1-07-11 and 16.1-07-12.

SECTION 10. A new subsection to section 39-06-03.1 of the North Dakota Century Code is created and enacted as follows:

The director shall issue a nondriver color photo identification card to any resident who at the time of application is not a citizen of the United States and who fulfills the requirements of this section. The identification card must be designed in a manner to clearly make the card distinguishable from a similar card issued to a citizen of the United States and resident of this state. The card may be replaced with a card issued to a citizen of this country and resident of this state only when proof of United States citizenship is provided by the individual and any applicable replacement fee listed in section 39-06-49 is paid.

SECTION 11. AMENDMENT. Section 39-06-07.1 of the North Dakota Century Code is amended and reenacted as follows:

39-06-07.1. Proof of name, date of birth, and legal presence, and citizenship for operator's license application - License difference for citizens and noncitizens.

An applicant must verify the applicant's name, date of birth, and legal presence on any application by a certified birth certificate or any other documentary evidence that confirms to the satisfaction of the director the true identity, date of birth, and legal presence, and citizenship of the applicant. The license issued to a noncitizen of the United States must be designed in a manner to distinguish the license clearly from a similar license issued to a citizen of the United States.

SECTION 12. A new subsection to section 39-06-14 of the North Dakota Century Code is created and enacted as follows:

The director shall issue an operator's license to any resident who at the time of application is not a citizen of the United States and who fulfills the requirements of this section. The license must be designed in a manner to distinguish the license clearly from a similar license issued to a citizen of the United States and resident of this state. The license issued under this subsection may be replaced with a card issued to a citizen of this country and resident of this state only when proof of United States citizenship is provided by the individual and the replacement fee listed in section 39-06-49 is paid.

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 Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1369.

House Vote: Yeas 74 Nays 16 Absent 4

Senate Vote: Yeas 35 Nays 10 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State