

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

FILED SENATE
Mar 9, 2017
S.B. 228
PRINCIPAL CLERK

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SENATE BILL DRS45175-LU-62* (02/28)

Short Title: Voter Freedom Act.

(Public)

Sponsors: Senators Clark, Van Duyn, and Woodard (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT REGARDING THE REQUIRED PROOF SUFFICIENT TO CHALLENGE A
PERSON'S ELIGIBILITY TO VOTE.

Whereas, registered voters in the State of North Carolina should be able to vote free of
intimidation; and

Whereas, registered voters in the State of North Carolina should be able to vote free of
specious challenges to their right to vote; and

Whereas, during the 2016 general election, numerous registered voters were subjected
to specious claims made by challengers whose claims were then accepted by county boards of
elections challenging the registered voters' right to vote; and

Whereas, there are two ways voters may be removed from the voter rolls (i) through a
voter challenge or (ii) by a county board of election's list maintenance efforts; and

Whereas, the predominant burden of proof in challenging a voter's right to vote should
be placed upon the challenger regarding whether the State Board of Elections accepts a claim and
ultimately then sustains that claim; and

Whereas, a voter cannot be removed from a voter registration roll by list maintenance
efforts, except through a notification process compliant with the National Voter Registration Act;
Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-85 reads as rewritten:

"§ 163-85. Challenge procedure other than on day of primary or election.

(a) Right to Challenge; When Challenge May Be Made. – Any registered voter of the
~~county-precinct~~ may challenge the right of any person to register, remain registered or vote in such
~~county-precinct~~. No such challenge may be made after the twenty-fifth day before each primary,
general, or special election.

...

(e) ~~Prima Facie~~ Evidence That Voter No Longer Resides in Precinct. – The presentation of
a letter mailed by returnable first-class mail to the voter at the address listed on the voter
registration card and returned because the person does not live at the address shall constitute ~~prima~~
~~facie~~ evidence that the person no longer resides in the precinct. However, in the absence of
affirmative proof, evidence of a returned mailing, on its own, shall not be sufficient to sustain the
burden of proof required by G.S. 163-90.1 in either a preliminary hearing under subsection (d) of
this section or a challenge hearing under G.S. 163-86.

(f) No challenge shall be sustained on the basis of a change of residency, except by (i)
written confirmation of the registrant of a change that renders the registrant ineligible to vote in
the county, (ii) notification from another county or state that the registrant has registered to vote in



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1 that county or state, or (iii) exhaustion of the notice provisions required by the National Voter
2 Registration Act."

3 **SECTION 2.** G.S. 163-86(c) reads as rewritten:

4 "(c) At the time and place set for the hearing on a challenge entered prior to the date of a
5 primary or election, the county board of elections shall explain to the challenged registrant the
6 qualifications for registration and voting in this State. The board chairman, or in his absence the
7 board secretary, shall then administer the following oath to the challenged registrant:

8 "You swear (or affirm) that the statements and information you shall give in this hearing with
9 respect to your identity and qualifications to be registered and to vote shall be the truth, the whole
10 truth, and nothing but the truth, so help you, God."

11 After swearing the challenged registrant, the board shall examine him as to his qualifications to be
12 registered and to vote. If the challenged registrant insists that he is qualified, the board shall tender
13 to him the following oath or affirmation:

14 "You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at
15 least 18 years of age or will become 18 by the date of the next general election; that you have or
16 will have resided in this State and in the precinct for which registered for 30 days by the date of
17 the next primary or election; that you are not disqualified from voting by the Constitution or the
18 laws of this State; that your name is ____, and that in such name you were duly registered as a
19 voter of ____ precinct; and that you are the person you represent yourself to be, so help you, God."

20 If the challenged registrant refuses to take the tendered oath, or submit to the board the affidavit
21 required by subsection (d), below, the challenge shall be ~~sustained~~. sustained only if the board
22 determines from evidence at the hearing that the challenged registrant received actual notice of the
23 challenge and the hearing. In the absence of such a determination, the board shall review the
24 registration of the voter for inclusion in the list maintenance processes under G.S. 163-82.14. If
25 the challenged registrant takes the tendered oath, the board may, nevertheless, sustain the
26 challenge if it finds the challenged registrant is not a legal voter.

27 The board, in conducting hearings on challenges, shall have authority to subpoena any
28 witnesses it may deem appropriate, and administer the necessary oaths or affirmations to all
29 witnesses brought before it to testify to the qualifications of the persons challenged."

30 **SECTION 3.** G.S. 163-90.1 reads as rewritten:

31 **"§ 163-90.1. Burden of proof.**

32 (a) Challenges shall not be made indiscriminately and may only be made if the challenger
33 ~~knows, suspects~~ knows or reasonably believes such a person not to be qualified and entitled to
34 vote. The challenger shall demonstrate to the board of elections the basis upon which the
35 challenger knows or reasonably believes the person is not qualified and not entitled to vote. The
36 evidence allowed under G.S. 163-85(e), on its own, shall not be sufficient to constitute the
37 demonstrated knowledge and belief of a person's qualifications to vote as required by this
38 subsection.

39 (b) No challenge shall be sustained unless the challenge is substantiated by affirmative
40 proof. In the absence of such proof, the presumption shall be that the voter is properly registered
41 or affiliated. The evidence allowed under G.S. 163-85(e), on its own, shall not be sufficient to
42 constitute the affirmative proof required by this subsection.

43 (c) The name of an individual whose right to vote is being challenged shall not be released
44 and is not a public record as defined in G.S. 132-1 until the challenger demonstrates to the board
45 of elections the burden of proof required under this section to establish the likelihood the
46 challenge will be substantiated."

47 **SECTION 4.** This act is effective when it becomes law and applies to elections held
48 on or after that date.