Article 8.

Challenges.

§ 163-84. Time for challenge other than on day of primary or election.

The registration records of each county shall be open to inspection by any registered voter of the State, including any chief judge or judge of elections, during the normal business hours of the county board of elections on the days when the board's office is open. At those times the right of any person to register, remain registered, or vote shall be subject to objection and challenge. (1901, c. 89, s. 19; Rev., s. 4339; C.S., s. 5972; 1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 33; 1993 (Reg. Sess., 1994), c. 762, s. 24; 2013-381, s. 20.1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 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 may challenge the right of any person to register, remain registered or vote in such county. No such challenge may be made after the twenty-fifth day before each primary, general, or special election.

(b) Challenges Shall Be Made to the County Board of Elections. – Each challenge shall be made separately, in writing, under oath and on forms prescribed by the State Board of Elections, and shall specify the reasons why the challenged voter is not entitled to register, remain registered, or vote. When a challenge is made, the board of elections shall cause the word "challenged" to be written in pencil on the registration records of the voter challenged. The challenge shall be signed by the challenger and shall set forth the challenger's address.

(c) Grounds for Challenge. – Such challenge may be made only for one or more of the following reasons:

(1) That a person is not a resident of the State of North Carolina, or
(2) That a person is not a resident of the county in which the person is registered, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, or
(3) That a person is not a resident of the precinct in which the person is registered, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, or
(4) That a person is not 18 years of age, or if the challenge is made within 60 days before a primary, that the person will not be 18 years of age by the next general election, or
(5) That a person has been adjudged guilty of a felony and is ineligible to vote under G.S. 163-55(2), or
(6) That a person is dead, or
(7) That a person is not a citizen of the United States, or
(8) With respect to municipal registration only, that a person is not a resident of the municipality in which the person is registered, or
(9) That the person is not who he or she represents himself or herself to be.

(d) Preliminary Hearing. – When a challenge is made, the county board of election shall schedule a preliminary hearing on the challenge, and shall take such testimony under oath and receive such other evidence proffered by the challenger as may be offered. The burden of proof shall be on the challenger, and if no testimony is presented, the board shall dismiss the challenge. If

the challenger presents evidence and if the board finds that probable cause exists that the person challenged is not qualified to vote, then the board shall schedule a hearing on the challenge.

(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. (1901, c. 89, s. 19; Rev., s. 4339; C.S., s. 5972; 1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 34; 1979, c. 357, s. 1; 1985, c. 563, ss. 11-11.2, 11.5; c. 589, s. 60; 1993 (Reg. Sess., 1994), c. 762, s. 25; 2009-526, s. 1.2; 2009-541, s. 16.1(a); 2009-550, s. 11; 2010-96, s. 18; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-86. Hearing on challenge.

(a) A challenge made under G.S. 163-85 shall be heard and decided before the date of the next primary or election, except that if the board finds that because of the number of challenges, it cannot hold all hearings before the date of the election, it may order the challenges to be heard and decided at the next time the challenged person appears and seeks to vote, as if the challenge had been filed under G.S. 163-87. Unless the hearing is ordered held under G.S. 163-87, it shall be heard and decided by the board of elections.

(b) At least 10 days prior to the hearing scheduled under G.S. 163-86(c), the board of elections shall mail by first-class mail, a written notice of the challenge to the challenged voter, to the address of the voter listed in the registration records of the county. The notice shall state succinctly the grounds asserted, and shall state the time and place of the hearing. If the hearing is to be held at the polls, the notice shall state that fact and shall list the date of the next scheduled election, the location of the voter's polling place, and the time the polls will be open. A copy of the notice shall be sent to the person making the challenge and to the chairman of each political party in the county.

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

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

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

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

If the challenged registrant refuses to take the tendered oath, or submit to the board the affidavit required by subsection (d), below, the challenge shall be sustained. If the challenged registrant takes the tendered oath, the board may, nevertheless, sustain the challenge if it finds the challenged registrant is not a legal voter.

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

(d) Appearance by Challenged Registrant. – The challenged registrant shall appear in person at the challenge hearing. If he is unable to appear in person, he may be represented by another person and must tender to the county board of elections an affidavit that he is a citizen of the United States, is at least 18 years of age or will become 18 by the date of the next general election, has or will have resided in this State and in the precinct for which registered for 30 days by the date of the next primary or election, is not disqualified from voting by the Constitution or laws of this State, is named ____ and was duly registered as a voter of ____ precinct in such name, and is the person represented to be by the affidavit. (1901, c. 89, s. 22; Rev., s. 4340; C.S., s. 5973; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 793, s. 35; 1979, c. 357, s. 2; 2008-150, s. 5(b); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-87. Challenges allowed during early voting and on day of primary or election.

On the day of a primary or election, or during the hours for early voting under Part 5 of Article 14A of this Chapter, at the time a registered voter offers to vote in person, any other registered voter of the county may exercise the right of challenge, and when the voter does so may enter the voting enclosure to make the challenge, but the voter shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, or during the hours for early voting under Part 5 of Article 14A of this Chapter, any other registered voter of the county may challenge a person for one or more of the following reasons:

(1) One or more of the reasons listed in G.S. 163-85(c).
(2) That the person has already voted in that primary or election.
(3) If the challenge is made with respect to voting in a partisan primary, that the person is a registered voter of another political party.
(4) Repealed by Session Laws 2018-144, s. 3.1(c), effective December 19, 2018.
(5) The registered voter does not present photo identification in accordance with G.S. 163-166.16.

The chief judge, judge, or assistant appointed under G.S. 163-41, 163-42, or 163-166.35 may enter challenges under this section against voters in the precinct or at the early voting site for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163-85(c)(3), the voter may still transfer that voter's registration under G.S. 163-82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred that voter's registration under G.S. 163-82.15(e) may be challenged at the precinct to which the registration is being transferred. (1915, c. 101, s. 11; 1917, c. 218; C.S., s. 6031; 1921, c. 181, s. 6; 1923, c. 111, s. 14; 1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; c. 1203, s. 7; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1985, c. 563, ss. 11.4, 14; 1987, c. 408, s. 7; 1993 (Reg. Sess., 1994), c. 762, s. 26; 1995 (Reg. Sess., 1996), c. 734, s. 4; 2006-262, s. 3(a); 2009-541, s. 16.1(b); 2013-381, ss. 2.9, 20.2; 2017-6, s. 3; 2018-144, s. 3.1(c); 2018-146, s. 3.1(a), (b); 2023-140, s. 13(a).)

§ 163-88. Hearing on challenge made during early voting and on day of primary or election.

(a) A challenge entered on the day of a primary or election, or during the hours for early voting under Part 5 of Article 14A of this Chapter, shall be heard and decided by the chief judge and judges of election of the precinct or early voting site in which the challenged registrant is registered before the polls are closed on the day the challenge is made. When the challenge is heard the precinct officials conducting the hearing shall explain to the challenged registrant the qualifications for registration and voting in this State, and shall examine him or her as to his or her qualifications to be registered and to vote. If the challenged registrant insists that he or she is qualified, and if, by sworn testimony, he or she shall prove his or her identity with the person in whose name he or she offers to vote and his or her continued residence in the precinct since being registered, one of the judges of election or the chief judge shall tender to him or her the following oath or affirmation, omitting the portions in brackets if the challenge is heard for an election other than a primary:

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

If the challenged registrant refuses to take the tendered oath, the challenge shall be sustained, and the precinct officials conducting the hearing shall mark the registration records to reflect their decision, and they shall erase the challenged registrant's name from the pollbook if it has been entered therein. If the challenged registrant takes the tendered oath, the precinct officials conducting the hearing may, nevertheless, sustain the challenge unless they are satisfied that the challenged registrant is a legal voter. If they are satisfied that he or she is a legal voter, they shall overrule the challenge and permit the voter to vote. Whenever any person's vote is received after having taken the oath prescribed in this section, the chief judge or one of the judges of election shall write on the registration record and on the pollbook opposite the registrant's name the word "sworn."

(b) Precinct election officials conducting hearings on challenges on the day of a primary or election, or during the hours for early voting under Part 5 of Article 14A of this Chapter, shall have authority to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of the person challenged.

(c) A letter or postal card mailed by returnable mail and returned by the United States Postal Service purportedly because the person no longer lives at that address or because a forwarding order has expired shall not be admissible evidence in a challenge heard under this section which was made under G.S. 163-87. (1901, c. 89, s. 22; Rev., s. 4340; C.S., s. 5973; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 1223, s. 6; 1985, c. 380, ss. 1, 1.1; 1993 (Reg. Sess., 1994), c. 762, s. 27; 2017-6, s. 3; 2018-146, s. 3.1(a), (b); 2023-140, s. 13(b).)

§ 163-88.1. Request for challenged ballot.

(a) If the decision of the chief judge and judges pursuant to G.S. 163-88 is to sustain the challenge, the challenged voter may request a challenged ballot by submitting an application to the chief judge, such application shall include as part thereof an affidavit that such person possesses all

the qualifications for voting and is entitled to vote at the election. The form of such affidavit shall be prescribed by the State Board of Elections and shall be available at the polls.

(b) Any person requesting a challenged ballot shall have the letter "C" entered at the appropriate place on the voter's permanent registration record. The voter's name shall be entered on a separate page in the pollbook entitled "Challenged Ballot," and serially numbered. The challenged ballot shall be the same type of ballot used for absentee voters, and the chief judge shall write across the top of the ballot "Challenged Ballot # __ ," and shall insert the same serial number as entered in the pollbook. The chief judge shall deliver to such voter a challenged ballot together with an envelope marked "Challenged Ballot" and serially numbered. The challenged voter shall forthwith mark the ballot in the presence of the chief judge in such manner that the chief judge shall not know how the ballot is marked. He shall then fold the ballot in the presence of the chief judge so as to conceal the markings and deposit and seal it in the serially numbered envelope. He shall then deliver such envelope to the chief judge. The chief judge shall retain all such envelopes in an envelope provided by the county board of elections, which he shall seal immediately after the polls close, and deliver to the board chairman at the canvass.

(c) The chairman of the county board of elections shall preserve challenged ballots in the sealed envelopes for a period of 22 months after the corresponding election or as otherwise specified in federal law, whichever is greater. However, in the case of a contested election, either party to such action may request the court to order that the sealed envelopes containing challenged ballots be delivered to the board of elections by the chairman. If so ordered, the board of elections shall then convene and consider each challenged ballot and rule as to which ballots shall be counted. In such consideration, the board may take such further evidence as it deems necessary, and shall have the power of subpoena. If any ballots are ordered to be counted, they shall be added to the vote totals. (1979, c. 357, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 28; 2017-6, s. 3; 2018-146, s. 3.1(a), (b); 2023-140, s. 14.)

§ 163-89. Procedures for challenging absentee ballots.

(a) Time for Challenge. – The absentee ballot of any voter received by the county board of elections pursuant to G.S. 163-231(b)(1) may be challenged no later than 5:00 P.M. on the fifth business day after the primary or general election or county bond election. The absentee ballot of any voter received by the county board of elections pursuant to G.S. 163-231(b)(2) may be challenged no later than 5:00 P.M. on the next business day following the deadline for receipt of such absentee ballots.

(b) Who May Challenge. – Any registered voter of the same county as the absentee voter may challenge that voter's absentee ballot.

(c) Form and Nature of Challenge. – Each challenged absentee ballot shall be challenged separately. The burden of proof shall be on the challenger. Each challenge shall be made in writing and, if they are available, shall be made on forms prescribed by the State Board of Elections. Each challenge shall specify the reasons why the ballot does not comply with the provisions of this Article or why the absentee voter is not legally entitled to vote in the particular primary or election. The challenge shall be signed by the challenger.

(d) To Whom Challenge Addressed; to Whom Challenge Delivered. – Each challenge shall be addressed to the county board of elections. It may be filed with the board at its offices or with the chief judge of the precinct in which the challenger and absentee voter are registered. If it is delivered to the chief judge, the chief judge shall personally deliver the challenge to the chairman of the county board of elections on the day of the county canvass.

(e) Hearing Procedure. – All challenges filed under this section shall be heard by the county board of elections on the day set for the canvass of the returns. All members of the board shall attend the canvass and all members shall be present for the hearing of challenges to absentee ballots.

Before the board hears a challenge to an absentee ballot, the chairman shall mark the word "challenged" after the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters.

The board then shall hear the challenger's reasons for the challenge, and it shall make its decision without opening the container-return envelope or removing the ballots from it.

The board shall have authority to administer the necessary oaths or affirmations to all witnesses brought before it to testify to the qualifications of the voter challenged or to the validity or invalidity of the ballot.

If the challenge is sustained, the chairman shall mark the word "sustained" after the word "challenged" following the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters; the voter's ballots shall not be counted; and the container-return envelope shall not be opened but shall be marked "Challenge Sustained." All envelopes so marked shall be preserved intact by the chairman for a period of six months from canvass day or longer if any contest then is pending concerning the validity of any absentee ballot.

If the challenge is overruled, the absentee ballots shall be removed from the container-return envelopes and counted by the board of elections, and the board shall adjust the appropriate abstracts of returns to show that the ballots have been counted and tallied in the manner provided for unchallenged absentee ballots.

If the challenge was delivered to the board by the chief judge of the precinct and was sustained, the board shall reopen the appropriate ballot boxes, remove such ballots, determine how those ballots were voted, deduct such ballots from the returns, and adjust the appropriate abstracts of returns.

Any voter whose ballots have been challenged may, either personally or through an authorized representative, appear before the board at the hearing on the challenge and present evidence as to the validity of the ballot. (1939, c. 159, ss. 8, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 547, s. 8; 1965, c. 871; 1967, c. 775, s. 1; 1973, c. 536, s. 4; 1993 (Reg. Sess., 1994), c. 762, s. 29; 2009-537, s. 8(c); 2014-111, s. 15(d); 2017-6, s. 3; 2018-146, s. 3.1(a), (b); 2023-140, s. 15.)

§ 163-90. Challenge as felon; answer not to be used on prosecution.

If any registered voter is challenged as having been convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any question in relation to the alleged conviction, but his answers to such questions shall not be used against him in any criminal prosecution. (1901, c. 89, s. 71; Rev., s. 3388; C.S., s. 5974; 1967, c. 775, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-90.1. Burden of proof.

(a) Challenges shall not be made indiscriminately and may only be made if the challenger knows, suspects or reasonably believes such a person not to be qualified and entitled to vote.

(b) No challenge shall be sustained unless the challenge is substantiated by affirmative proof. In the absence of such proof, the presumption shall be that the voter is properly registered or affiliated. (1979, c. 357, s. 4; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-90.2. Action when challenge sustained, overruled, or dismissed.

(a) When any challenge is sustained for any cause listed under G.S. 163-85(c), the board shall cancel or correct the voter registration of the voter. The board shall maintain such record for at least six months and during the pendency of any appeal. The challenged ballot shall be counted for any ballot items for which the challenged voter is eligible to vote, as if it were a provisional official ballot under the provisions of G.S. 163-166.11(4).

(b) When any challenge made under G.S. 163-85 is overruled or dismissed, the board shall erase the word "challenged" which appears on the person's registration records.

(c) A decision by a county board of elections on any challenge made under the provisions of this Article shall be appealable to the Superior Court of the county in which the offices of that board are located within 10 days. If the appeal is made by the State Board, that appeal shall be to the Superior Court of the county in which the challenge originated. Only those persons against whom a challenge is sustained or persons who have made a challenge which is overruled shall have standing to file such appeal. (1979, c. 357, s. 4; 1987 (Reg. Sess., 1988), c. 1028, s. 11; 2006-262, s. 3(b); 2017-6, s. 3; 2018-146, s. 31(a), (b); 2023-140, s. 16.)

§ 163-90.3. Making false affidavit perjury.

Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this Article to be sworn or affirmed shall be guilty of a Class I felony. (1979, c. 357, s. 4; 1987, c. 565, s. 2; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)