

ARTICLE 5:02

STATE BOARD OF ELECTIONS

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CHAPTER 5:02:24

VOTER REGISTRATION CHALLENGES

Section

5:02:24:01 Voter registration challenge application.

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5:02:24:01. Voter registration challenge application. The Secretary of State's Office shall create and produce an application to challenge the right to vote of any registered voter and distribute the application to the county auditors. The application to challenge the right to vote of any registered voter must contain the following information:

- (1) The name of the individual filing the challenge;
- (2) The address of the individual filing the challenge;
- (3) Contact information for the individual filing the challenge, including:
 - (a) The individual's phone number; and
 - (b) The individual's email address;
- (4) The name of the challenged voter;
- (5) Additional identifying information for the challenged voter, including:
 - (a) The voter identification number of the voter;
 - (b) Social Security number
 - (c) Driver license number; South Dakota nondriver identification card number;
 - (d) Passport number; or
 - (e) The year of birth of the voter;
- (6) The voter registration address of the challenged voter;
- (7) The reason for the challenge, including:
 - (a) The challenged voter is disqualified from voting, pursuant to SDCL 12-4-18;
 - (b) The challenged voter is deceased;
 - (c) The challenged voter has voted or registered to vote in another state; or
 - (d) The challenged voter is not a resident of South Dakota, pursuant to SDCL 12-1-4;

- (8) A list of the documentation provided with the application to demonstrate the insufficiency of the challenged voter's qualifications;
- (9) An oath administered by a notary public or another official authorized by this state to administer an oath: "I, _____ (printed name of the individual filing the challenge), under oath, attest that, to the best of my personal knowledge and belief, having exercised due diligence to personally verify the evidence presented, the challenged voter is not qualified to vote based on the reason indicated above. I have filed a complete voter registration challenge application, which includes attached evidence. I attest that the application is not based on an unsupported allegation or the allegation of an anonymous third party. I understand that this application and the attached documentation may be provided to the challenged voter, and that the challenged voter may request a hearing to demonstrate their qualifications as a registered voter."
- (10) The date the application was filed with the county auditor, including:
- (a) Whether the application was filed at least thirty days before an election for the reasons listed in subsections 5:02:24:01(7)(a) and (7)(b); or
 - (b) Whether the application was filed at least ninety days before an election for the reasons listed in subsections 5:02:24:01(7)(c) and (7)(d);
- (11) The county in which the individual filing the challenge is registered to vote in, including:
- (a) Whether the individual filing the challenge is registered to vote in South Dakota for the reasons listed in subsections 5:02:24:01(7)(a) and (7)(b); or
 - (b) Whether the individual filing the challenge is registered to vote in the same county as the challenged voter for the reasons listed in subsections 5:02:24:01(7)(c) and (7)(d);

Source:

General Authority: SDCL 12-1-9(4), 12-4-60

Law Implemented: 12-4-58, 12-4-59, 12-4-60, 12-4-61

5:02:24:02. Documentation required to support voter registration challenge. When an individual files a voter registration challenge affidavit, the individual shall provide the county auditor originals or photocopies of the following documents sufficient to demonstrate the insufficiency of the challenged voter's qualifications:

(1) If the affidavit raises a challenge on the grounds that the challenged voter is disqualified from voting, pursuant to SDCL 12-4-18:

- (a) A court order declaring the challenged voter to be mentally incompetent; or
- (b) A record of a felony conviction in a state or federal court;

(2) If the affidavit raises a challenge on the grounds that the challenged voter is deceased:

- (a) An obituary; or
- (b) A death certificate;

(3) If the affidavit raises a challenge on the grounds that the challenged voter has voted or registered to vote in another state:

- (a) A voter file obtained from an election official in another state indicating that the challenged voter is registered to vote in the state; or
- (b) A voter history file obtained from an election official in another state indicating that the challenged voter has voted or offered to vote at any election held in the other state;

(4) If the affidavit raises a challenge on the grounds that the challenged voter is not a resident of South Dakota, pursuant to SDCL 12-1-4:

- (a) A driver's license or nondriver identification card issued by another state;
- (b) A resident hunting, fishing, or trapping license issued by another state;

- (c) A national change of address with the United States Post Office indicating that the challenged voter has moved to another state;
- (d) State or county records for a property owned by the challenged voter in another state indicating that the property is subject to a homestead exemption;
- (e) Tax documents indicating that the challenged voter is a resident of another state for the purpose of taxation; or
- (f) A completed residency affidavit or certificate from another state.

Source:

General Authority: SDCL 12-1-9(4), 12-4-60

Law Implemented: 12-4-58, 12-4-59, 12-4-60, 12-4-61

5:02:24:03. Documentation required to rebut voter registration challenge. When a challenged voter is required to demonstrate the sufficiency of the voter's qualifications, the voter shall provide the county auditor with an original or a photocopy of the following documents:

(1) A valid form of personal identification:

(a) A South Dakota driver's license or nondriver identification card;

(b) A Social Security Administration account number card;

(c) A passport or an identification card issued by an agency of the United States government; or

(d) A tribal identification card of a federally recognized Indian tribe located wholly or partially within South Dakota; and

(2) If the affidavit raises a challenge on the grounds that the challenged voter is disqualified from voting, pursuant to SDCL 12-4-18:

(a) A court order declaring that the challenged voter has been restored to competency;
or

(b) Records from the Unified Judicial System, the Department of Corrections, or the federal court or penitentiary system indicating that the challenged voter has completed the incarceration portion of the sentence imposed on the voter for a felony conviction;

(3) If the affidavit raises a challenge on the grounds that the challenged voter is deceased:

(a) An affidavit signed by the challenged voter affirming that that the voter is not deceased; or

(4) If the affidavit raises a challenge on the grounds that the challenged voter has voted or registered to vote in another state:

- (a) A record or statement from an election official in the state indicating that the challenged voter is not registered to vote in the state;
- (b) A record or statement from an election official in the state indicating that the challenged voter's registration was canceled; or
- (c) A record or statement from an election official in the state indicating that the challenged voter has not voted or offered to vote at any election in the state; or

(5) If the affidavit raises a challenge on the grounds that the challenged voter is not a resident of South Dakota, pursuant to SDCL 12-1-4:

- (a) A South Dakota driver's license or nondriver identification card;
- (b) A tribal identification card of a federally recognized Indian tribe located wholly or partially within South Dakota;
- (c) A South Dakota resident hunting, fishing, or trapping license issued by the Department of Game, Fish, and Parks;
- (d) County records for a property owned by the challenged voter in South Dakota indicating that the property is subject to a homestead exemption;
- (e) Tax documents indicating that the challenged voter is a resident of South Dakota for the purpose of taxation;
- (f) A consent for use of South Dakota address form; or
- (g) A completed South Dakota residency affidavit or certificate.

Source:

General Authority: SDCL 12-1-9(4), 12-4-60

Law Implemented: 12-4-58, 12-4-59, 12-4-60, 12-4-61

5:02:24:04. Process to establish the validity of a voter registration challenge. The county auditor shall adhere to the following process to establish the validity of a voter registration challenge:

- (1) Upon receipt of a voter registration challenge affidavit, the county auditor shall scan the affidavit into the computerized voter registration system maintained by the secretary of state;
- (2) The county auditor shall evaluate the documentation provided with the voter registration challenge affidavit and determine if the documentation taken at face value establishes a prima facie case against the challenged voter:
 - (a) If the documentation is insufficient to establish a prima facie case against the challenged voter, the voter registration challenge must be deemed invalid; or
 - (b) If the documentation taken at face value is sufficient to establish a prima facie case against the challenged voter, the county auditor shall investigate the authenticity of the documentation;
- (3) The county auditor shall make a reasonable effort to determine if the documentation provided with the voter registration challenge affidavit is authentic:
 - (a) If the county auditor is unable to confirm the authenticity of the documentation, the voter registration challenge must be deemed invalid; or
 - (b) If the county auditor confirms the authenticity of the documentation, the voter registration challenge must be deemed valid;

- (4) Upon the county auditor's determination that the voter registration challenge is valid, the auditor shall send a verification request to the challenged voter pursuant to SDCL 12-4-61;
- (5) At the request of the challenged voter, the county auditor shall hold a hearing to determine the validity of the voter's qualifications. The conduct of the hearing may be determined by the county auditor, except that the county auditor shall ensure that:
- (a) The challenged voter may rebut the evidence provided against the validity of the voter's qualifications in the voter registration challenge affidavit; and
 - (b) The challenged voter may provide documentation sufficient to demonstrate the validity of voter's qualifications;
- (6) After the hearing, the county auditor shall determine the validity of the challenged voter's qualifications:
- (a) If the challenge is not valid, the county auditor shall maintain the voter's registration; or
 - (b) If the challenge is valid, the county auditor shall cancel the voter's registration pursuant to SDCL 12-4-61.
- (7) If at any point the county auditor determines the challenge is valid, the county auditor shall state in writing:
- (a) The factual basis supporting the determination;
 - (b) Notify the challenger and the challenged voter of the determination; and
 - (c) Inform the challenged voter that the voter may appeal the decision to either the county commissioners or the circuit court.

Source:

General Authority: SDCL 12-1-9(4), 12-4-61

Law Implemented: 12-4-58, 12-4-59, 12-4-60, 12-4-61