



# HOUSE BILL 1092: Const. Amendment - Require Photo ID to Vote.

2017-2018 General Assembly

<b>Committee:</b>		<b>Date:</b>	August 6, 2018
<b>Introduced by:</b>		<b>Prepared by:</b>	Jessica Sammons Staff Attorney
<b>Analysis of:</b>	S.L. 2018-128		

**OVERVIEW:** *S.L. 2018-128 proposes amendments to the North Carolina Constitution to require photo identification for voters voting in person, and places the amendments on the ballot in the November 2018 general election.*

**CURRENT LAW:** For each voter in the State, when appearing at the polls, that voter must state his or her name and residence address to the election official. The individual, if verified by the election official as a registered voter, must then sign his or her name to the poll book, other voting record, or voter authorization document prior to voting. (G.S. 163A-1137). County boards may not require voters to show voter registration cards to vote. (G.S. 163A-869).

**Showing of ID – Certain First Time Voters:** A voter registering by mail, who has not previously voted in an election with a federal ballot item, must provide one of the following forms of Help America Vote Act (HAVA) identification prior to voting in person:

- A current and valid photo ID.
- A copy of one of the following documents that shows the name and address of the voter: current utility bill, bank statement, government check, paycheck, or other government document.

A voter is exempted from showing identification if that individual included as part of his or her voter registration one of the forms of ID listed above, or his or her driver's license number or the last four digits of his or her social security number which matched an existing State identification record. Also exempt are overseas and military voters entitled to vote by absentee ballot under the Uniform Military and Overseas Voter Act (Part 2 of Article 21 of Chapter 163A) and voters entitled to vote other than in person under the federal Voting Accessibility for the Elderly and Handicapped Act. (G.S. 163A-1144).

In 2013, the General Assembly enacted statutory provisions requiring photo ID, which were enjoined by the federal courts. (See Background below for more information.)

**OTHER STATES:** Thirty-four states have laws requesting or requiring voters to show some form of ID in order to vote.<sup>1</sup> Of these 34 states, 17 states ask for a photo ID, and the other 17 also accept non-photo IDs. When a voter fails to provide acceptable ID, states provide alternative methods, classified as either "strict" or "non-strict".

- Strict – Voters without acceptable ID must vote a provisional ballot and also take additional steps after Election Day for their vote to be counted. Most states with strict voter ID

<sup>1</sup> <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

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requirements have some exceptions in the law, such as for people with religious objections to being photographed or who are indigent.

- Non-strict – At least some voters without acceptable ID have the option to cast a ballot that will be counted with no further action necessary. Examples include: (i) having the voter sign an affidavit of identity, and (ii) voting a provisional ballot, with the election official determining whether the voter was eligible, such as with a signature check.

The following states have Constitutional provisions concerning presenting photo ID when voting:

- Mississippi – Requires a qualified elector who votes in a primary or general election in person to present a government-issued photo ID before being allowed to vote. Individuals who cannot afford a government-issued photo ID can obtain a state-issued photo ID free of charge.
- Missouri – Provides that a person seeking to vote in person in an election may be required by general law to verify their identity by providing a form of ID, including a valid government-issued photo ID. Exceptions to the ID requirement may be provided for by general law.

One state has a proposed Constitutional amendment on the 2018 ballot concerning presenting photo ID when voting:

- Arkansas – If passed, a voter would be required to present valid photo ID when voting in person or when casting an absentee ballot. The State would provide a state-issued photo ID at no charge to eligible voters lacking a photo ID.

**BILL ANALYSIS:** The act would amend Sections 2 and 3 of Article VI of the North Carolina Constitution with identical wording to require that voters offering to vote in person present photo ID before voting, in the manner prescribed by law, if approved by a majority of the voters in the November 2018 election. The General Assembly would be authorized, by general law, to establish exceptions to the requirement.

**EFFECTIVE DATE:** If approved by the voters in the November 2018 election, the amendments to the North Carolina Constitution become effective upon certification.

**BACKGROUND:** In NAACP v. McCrory, the defendants were enjoined from implementing certain portions of Session Laws 2013-381 and Session Laws 2015-103, relating to photo IDs and changes to early voting, same-day registration, out-of-precinct voting, and preregistration, and the pertinent statutory provisions in effect prior to those amendments were declared to be in full force.

**Photo Identification Requirement – as enjoined by the federal court** – G.S. 163A-1145 required all qualified voters voting in person to present photo ID bearing any reasonable resemblance to the voter, subject to certain exceptions. Voters without photo ID would vote a provisional ballot. Acceptable identification has a photograph of the registered voter, a printed expiration date, and must be unexpired, except that voters age 70 and older can present an expired form of identification. Drivers' licenses and non-operators' identification cards issued by NC DMV may be used for photo ID, even though expired, for up to four years beyond the expiration date.

- **Exceptions to the Photo Identification Requirement**

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- **Religious Objectors** – Voters with a sincerely held religious belief against being photographed would be permitted to vote a regular ballot if that person executed a declaration of that objection before an election official more than 25 days before the election. The declaration would be incorporated into the voter's official voter registration record.
- **Curbside Voters** – Qualified voters who due to age or physical disability are unable to enter the voting enclosure are permitted to vote in their vehicle (G.S. 163A-1140). These voters could comply with the photo ID requirements in one of two ways:
  - 1) Presenting acceptable photo ID.
  - 2) Presenting a copy of a HAVA document.
- **Natural Disaster Affidavit** – A voter who was unable to produce photo ID as a result of a natural disaster occurring within 60 days of the election that was declared by the President or Governor may sign a declaration to that effect and vote a regular ballot.

**Reasonable Impediment – as enjoined by the federal court** – If a voter does not have the appropriate photo ID, a voter must be notified of the option to complete a reasonable impediment declaration and vote a provisional ballot, and of the option to complete a written request for an absentee ballot until the deadline for submission of requests for absentee ballots under current law.

The voter must complete a reasonable impediment declaration form declaring that the voter is the same individual who personally appeared at the polling place, cast the provisional ballot while voting in person, and suffers from a reasonable impediment that prevents the voter from obtaining a photo ID. The voter must also present identification in the form of (i) a copy of a current utility bill, bank statement, government check, paycheck, or other government document (HAVA documents); (ii) the voter registration card; or (iii) the last four digits of the voter's social security number and the voter's date of birth. If the voter complies with this, the voter can vote a provisional ballot that will be counted.

If the voter does not present identification but does complete the reasonable declaration form, the voter can vote a provisional ballot that will be counted if the voter later brings the required identification to the county board of elections.

**How Provisional Ballots Would Have Been Counted Under the Enjoined Photo ID & Reasonable Impediment Provisions** – The county board of elections must find that a voter's provisional ballot cast following completion of a declaration of reasonable impediment is valid and direct that the provisional ballot be opened and counted unless any of the following apply:

- The county board of elections has grounds, including an impediment evidentiary challenge by a voter, to believe the declaration is factually false, merely denigrated the photo identification requirement, or made obviously nonsensical statements.
- The voter failed to present a HAVA document, voter registration card, or the voter's last four digits of the social security number and date of birth to the county board of elections.
- The voter provided the last four digits of the social security number and date of birth as the required form of identification and the county board of elections could not confirm the voter's registration using that information.
- The voter is disqualified for some other reason provided by law.

An impediment evidentiary challenge may be made by any registered voter of the county by submitting clear and convincing evidence in writing challenging the factual veracity of the impediment, and must be submitted no later than 5:00 PM on the third business day following the election. The county board must hear evidentiary challenges on the date set for the canvass (10 days after the election for general elections occurring in November of an even-numbered year, and 7 days after the election for all other elections). A

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voter whose declaration has been challenged can appear before the county board and present evidence supporting the factual veracity of the impediment. The county board cannot find a challenge valid if it only provides evidence regarding the reasonableness of the impediment, but may find a challenge valid if the evidence demonstrates that the declaration merely denigrated the photo identification requirement, made obviously nonsensical statements, or made statements that were factually false.

**Voter Turnout With Photo ID** – The primary election in 2016 was conducted in accordance with G.S. 163A-1145. The voter turnout for the 2016 primary election was 2,323,590, or 35.69% of the registered voters. The chart below compares voter turnout during recent statewide primary elections for both presidential and non-presidential election years:

Year	Total Ballots Cast	Percent of Registered Voters
2010	880,128	14.41%
2012	2,182,675	34.66%
2014	1,028,600	15.79%
2016	2,323,590	35.69%
2018	957,627	14.35%