

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1136
(Judiciary Committee)
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 44-06.1 of the North Dakota Century Code, relating to notarial acts; to amend and reenact subsection 6 of section 10-19.1-84, subsection 4 of section 44-05-01, and sections 44-08-06 and 47-19-18 of the North Dakota Century Code, relating to notarial acts; to repeal chapter 44-06 and sections 47-19-14.1, 47-19-14.2, 47-19-14.3, 47-19-14.4, 47-19-14.5, 47-19-14.6, 47-19-14.7, and 47-19-14.8 of the North Dakota Century Code, relating to notarial acts; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

6. A shareholder, beneficial owner, or holder of a voting trust certificate of a publicly held corporation has, upon written demand stating the purpose and acknowledged or verified in the manner provided in chapter ~~44-06~~44-06.1, a right at any reasonable time to examine and copy the corporation's share register and other corporate records reasonably related to the stated purpose and described with reasonable particularity in the written demand upon demonstrating the stated purpose to be a proper purpose. The acknowledged or verified demand must be directed to the corporation at its registered office in this state or at its principal place of business.

SECTION 2. AMENDMENT. Subsection 4 of section 44-05-01 of the North Dakota Century Code is amended and reenacted as follows:

4. Notary public anywhere in the state, ~~upon complying with section 44-06-04.~~

SECTION 3. Chapter 44-06.1 of the North Dakota Century Code is created and enacted as follows:

44-06.1-01. Definitions.

As provided in this chapter:

1. "Acknowledgment" means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or person identified in the record.
2. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
3. "Electronic signature" means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.
4. "In a representative capacity" means acting as:
 - a. An authorized officer, agent, partner, trustee, or other representative for a person other than an individual;

- b. A public officer, personal representative, guardian, or other representative, in the capacity stated in a record;
 - c. An agent or attorney in fact for a principal; or
 - d. An authorized representative of another in any other capacity.
5. "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy except as provided in subdivision j of subsection 6 of section 44-06.1-23, and noting a protest of a negotiable instrument.
6. "Notarial officer" means a notary public or other individual authorized to perform a notarial act.
7. "Notary public" means an individual commissioned to perform a notarial act by the secretary of state.
8. "Official stamp" means a physical image affixed to a tangible record or an electronic image attached to or logically associated with an electronic record.
9. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
10. "Sign" means, with present intent to authenticate or adopt a record:
- a. To execute or adopt a tangible symbol; or
 - b. To attach to or logically associate with the record an electronic symbol, sound, or process.
11. "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record.
12. "Stamping device" means:
- a. A physical device capable of affixing to a tangible record an official stamp; or
 - b. An electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.
13. "Verification on oath or affirmation" means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

44-06.1-02. Applicability.

The provisions of this chapter apply to notarial acts performed on or after the effective date of this chapter.

44-06.1-03. Authority to perform notarial acts.

A notarial officer may perform notarial acts authorized by this chapter or by other law of this state.

44-06.1-04. Requirements for certain notarial acts.

1. A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

2. A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.
3. A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and signing the record has the identity claimed.
4. A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true, and accurate transcription or reproduction of the record or item.
5. A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in section 41-03-62.

44-06.1-05. Personal appearance required.

If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer.

44-06.1-06. Identification of individual.

1. A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.
2. A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual:
 - a. By means of:
 - (1) A passport, driver's license, or government-issued nondriver identification card that is currently valid or expired not more than three years before performance of the notarial act; or
 - (2) Another form of government identification issued to an individual that is currently valid or expired not more than three years before performance of the notarial act, contains the individual's signature or a photograph of the individual, and is satisfactory to the officer; or
 - b. By a verification on oath or affirmation of a credible witness personally appearing before the officer and known to the officer or whom the officer can identify on the basis of a passport, driver's license, or government-issued nondriver identification card that is currently valid or expired not more than three years before performance of the notarial act.
3. A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the officer of the identity of the individual.

44-06.1-07. Authority to refuse to perform notarial act.

1. A notarial officer may refuse to perform a notarial act if the officer is not satisfied that:
 - a. The individual executing the record is competent or has the capacity to execute the record; or
 - b. The individual's signature is knowingly and voluntarily made.

2. Except as prohibited by law other than the provisions of this chapter, a notarial officer may refuse to perform a notarial act.

44-06.1-08. Signature if individual unable to sign.

If an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The notarial officer shall insert "Signature affixed by (insert name of other individual) at the direction of (insert name of individual)" or words of similar import.

44-06.1-09. Notarial act in this state.

1. A notarial act may be performed in this state by the following individuals:
 - a. A notary public of this state;
 - b. A judge, clerk, or deputy clerk of any court of this state; or
 - c. Any other individual authorized to perform the specific act by the law of this state.
2. The signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.
3. The signature and title of a notarial officer described in subdivision a or b of subsection 1 conclusively establish the authority of the officer to perform the notarial act.

44-06.1-10. Notarial act in another state.

1. A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by:
 - a. A notary public of that state;
 - b. A judge, clerk, or deputy clerk of a court of that state; or
 - c. Any other individual authorized by the law of that state to perform the notarial act.
2. The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.
3. The signature and title of a notarial officer described in subdivision a or b of subsection 1 conclusively establish the authority of the officer to perform the notarial act.

44-06.1-11. Notarial act under authority of tribe.

1. A notarial act performed under the authority and in the jurisdiction of a federally recognized American Indian tribe has the same effect as if performed by a notarial officer of this state, if the act performed in the jurisdiction of that tribe is performed by:
 - a. A notary public of that tribe;
 - b. A judge, clerk, or deputy clerk of a court of that tribe; or
 - c. Any other individual authorized by the law of that tribe to perform the notarial act.
2. The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized American Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.

3. The signature and title of a notarial officer described in subdivision a or b of subsection 1 conclusively establish the authority of the officer to perform the notarial act.

44-06.1-12. Notarial act under federal authority.

1. A notarial act performed under federal law has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed under federal law is performed by:
 - a. A judge, clerk, or deputy clerk of a court;
 - b. An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;
 - c. An individual designated a notarizing officer by the United States department of state for performing notarial acts overseas; or
 - d. Any other individual authorized by federal law to perform the notarial act.
2. The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.
3. The signature and title of an officer described in subdivision a, b, or c of subsection 1 establish the authority of the officer to perform the notarial act.

44-06.1-13. Foreign notarial act.

1. In this section, "foreign state" means a government other than the United States, a state, or a federally recognized American Indian tribe.
2. If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notarial officer of this state.
3. If the title of office and indication of authority to perform notarial acts in a foreign state appear in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.
4. The signature and official stamp of an individual holding an office described in subsection 3 are prima facie evidence that the signature is genuine and the individual holds the designated title.
5. An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the Hague Convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.
6. A consular authentication issued by an individual designated by the United States department of state as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

44-06.1-14. Certificate of notarial act.

1. A notarial act must be evidenced by a certificate. The certificate must:
 - a. Be executed contemporaneously with the performance of the notarial act;

- b. Be signed and dated by the notarial officer and, if the notarial officer is a notary public, be signed in the same manner as on file with the secretary of state;
 - c. Identify the jurisdiction in which the notarial act is performed;
 - d. Contain the title of office of the notarial officer; and
 - e. Indicate the date of expiration, if any, of the notarial officer's commission, if the officer is a notary public.
2. If a notarial act is performed by a notary public regarding a tangible record, the notary public's official stamp must be affixed to the certificate. If a notarial act is performed by a notarial officer, other than a notary public, regarding a tangible record and the certificate contains the information specified in subdivisions b, c, and d of subsection 1, an official stamp may be affixed to the certificate. If the notarial act is performed by a notarial officer regarding an electronic record and the certificate contains the information specified in subdivisions b, c, and d of subsection 1, an official stamp may be attached to or logically associated with the certificate.
3. A certificate of a notarial act is sufficient if it meets the requirements of subsections 1 and 2 and:
- a. Is in a short form set forth in section 44-06.1-19;
 - b. Is in a form otherwise permitted by the law of this state;
 - c. Is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or
 - d. Sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in sections 44-06.1-04, 44-06.1-05, and 44-06.1-06 or other law.
4. By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in sections 44-06.1-04, 44-06.1-05, and 44-06.1-06.
5. A notarial officer may not affix the officer's signature to, or logically associate it with, a certificate until the notarial act has been performed.
6. If a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to, or logically associated with, the electronic record. If the secretary of state has established standards pursuant to section 44-06.1-25 for attaching, affixing, or logically associating the certificate, the process must conform to the standards.

44-06.1-15. Official stamp.

The official stamp of a notary public must:

- 1. Include the notary public's name, jurisdiction, commission expiration date, and other information required under section 44-06.1-16 or by the secretary of state; and
- 2. Be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

44-06.1-16. Stamping device.

1. The secretary of state, upon receipt of the proper fee, oath, and bond, shall issue a certificate of authorization with which the notary public may obtain an official notary stamping device. A notary stamp vendor may provide a notary with an official stamping device only upon presentation by the notary of a certificate of authorization. The notary public shall place an impression of the notary's stamp on the certificate of authorization and return the certificate of authorization to the secretary of state. After the certificate of authorization is received, approved, and filed, the secretary of state shall issue a notary commission that authorizes the notary to commence the duties of the office of notary public. A notary being commissioned must obtain a stamping device approved by the secretary of state which must be designed to leave a clear impression, be photographically reproducible, include the words "State of North Dakota" and "Notary Public", contain the name and commission expiration date of the notary public exactly as shown on the notary's commission, and which may not contain any other words, numbers, symbols, or a reproduction of the great seal of the state. All notary stamps must be surrounded by a border and, except as otherwise permitted by the secretary of state, be either one and five-eighths inch [41.28 millimeters] in diameter or if of a rectangular design, may be up to or equal to seven-eighths inch [22.23 millimeters] vertically by two and five-eighths inches [66.68 millimeters] horizontally.
2. A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act. On resignation from, or the revocation or expiration of, the notary public's commission, or on the expiration of the date set forth in the stamping device, if any, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable. On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other individual knowingly in possession of the stamping device shall render it unusable by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable.
3. If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall notify promptly the secretary of state on discovering that the device is lost or stolen.
4. An official stamping device is the property of the notary only and may not be retained or used by any other person, including an employer of a notary even if the employer purchased or paid for the notary's stamping device. An official stamping device must remain in the direct and exclusive control of the notary at all times during a notary's commission.

44-06.1-17. Notary vacancies - Resignations.

Whenever the office of any notary public becomes vacant, the record of the notary together with all papers relating to the office must be deposited in the office of the secretary of state except for the stamping device, which must be destroyed as provided in section 44-06.1-16. If a notary public resigns the notary's commission, the notary shall notify the secretary of state within thirty days of the resignation, and shall indicate the effective date of the resignation. Any notary public who, on resignation or removal from office, or any executor or personal representative of the estate of any deceased notary public who neglects to deposit the records and papers as aforesaid for the space of three months, or any person who knowingly destroys, defaces, or conceals any records or papers of any notary public, shall forfeit and pay a sum of not less than fifty dollars nor more than five hundred dollars, and that person also is liable in a civil action for damages to any party injured.

44-06.1-18. (Effective after July 31, 2013) Notification regarding performance of notarial acts on electronic record - Selection of technology.

1. A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. An individual may not require a notary public to perform a

notarial act with respect to an electronic record with a technology that the notary public has not selected.

2. Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the secretary of state that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the secretary of state has established standards for approval of technology pursuant to section 44-06.1-25, the technology must conform to the standards. If the technology conforms to the standards, the secretary of state shall approve the use of the technology.

44-06.1-19. Short form.

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by subsections 1 and 2 of section 44-06.1-14:

1. For an acknowledgment in an individual capacity:

State of _____

[County] of _____

This record was acknowledged before me on _____ by _____

Date Name(s) of individual(s)

Signature of notarial officer

Stamp

[_____]

Title of office

[My commission expires: _____.]

2. For an acknowledgment in a representative capacity:

State of _____

[County] of _____

This record was acknowledged before me on _____ by _____

Date Name(s) of individual(s)

(type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed.)

Signature of notarial officer

Stamp

[_____]

Title of office

[My commission expires: _____.]

3. For a verification on oath or affirmation:

State of _____

[County] of _____

Signed and sworn to (or affirmed) before me on _____ by _____

Date Name(s) of individual(s)
making statement

Signature of notarial officer

Stamp

[_____]

Title of office

[My commission expires: _____.]

4. For witnessing or attesting a signature:

State of _____

[County] of _____

Signed [or attested] before me on _____ by _____

Date Name(s) of individual(s)

Signature of notarial officer

Stamp

[_____]

Title of office

[My commission expires: _____.]

5. For certifying a copy of a record:

State of _____

[County] of _____

I certify that this is a true and correct copy of a record in the possession of _____

_____.

Dated _____

Signature of notarial officer

Stamp

Title of office

[My commission expires: _____.]

44-06.1-20. Notary public commission - Qualifications.

1. An individual qualified under subsection 2 may apply to the secretary of state for a commission as a notary public. The applicant shall comply with and provide the information required by the secretary of state and submit the required application fee of thirty-six dollars.
2. An applicant for a commission as a notary public must:
 - a. Be at least eighteen years of age;
 - b. Be a citizen or permanent legal resident of the United States;
 - c. Be a resident of or have a place of employment or practice in this state or must reside in a county that borders this state and which is in a state that extends reciprocity to a notary public who resides in a border county of this state. If the person resides in a county bordering this state, that person by applying for a commission in this state appoints the secretary of state as the agent for service of process, for all purposes relating to notarial acts, including the receipt of correspondence relating to notarial acts;
 - d. Be able to read and write English; and
 - e. Not be disqualified to receive a commission under section 44-06.1-21.
3. Before issuance of a commission as a notary public, an applicant for the commission shall execute an oath of office and submit it to the secretary of state.
4. Before issuance of a commission as a notary public, the applicant for a commission shall submit to the secretary of state an assurance in the form of a surety bond or its functional equivalent in the amount of seven thousand five hundred dollars and is subject to approval by the secretary of state. The assurance must be issued by a surety or other entity licensed or authorized to do business in this state. The assurance must cover acts performed during the term of the notary public's commission and must be in the form prescribed by the secretary of state. If a notary public violates law with respect to notaries public in this state, the surety or issuing entity is liable under the assurance. The surety or issuing entity shall give thirty days' notice to the secretary of state before canceling the assurance. The surety or issuing entity shall notify the secretary of state not later than thirty days after making a payment to a claimant under the assurance. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the secretary of state.
5. On compliance with subsections 1, 2, 3, and 4, the secretary of state shall issue a notary public commission to an applicant for a term of six years, unless sooner removed by the secretary of state. The notary shall post the commission in a conspicuous place in the notary's office or place of employment.
6. A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide a notary public any immunities or benefits conferred by law of this state on public officials or employees.

7. Notwithstanding any other provision of law, a notary public may perform any notarial act as defined in section 44-06.1-01 outside the state as provided in section 47-19-55.
8. The secretary of state shall notify each notary public at least thirty days before the expiration of the notary public's term of the date upon which the notary public's commission will expire. The notice must be addressed to the notary public at the last-known place of residence.
9. Each notary public issued a commission shall notify the secretary of state by mail within sixty days of any change of address. If a notary fails to notify the secretary of state within sixty days of a change of address, the secretary of state may impose a late fee in the amount of ten dollars. The notary shall pay any late fee imposed by the secretary of state before the renewal of the notary's commission.

44-06.1-21. Grounds to deny, refuse to renew, revoke, suspend, or condition commission of notary public.

1. The secretary of state may deny or refuse to renew a notary public commission, or may revoke, suspend, or condition a notary public commission for any act or omission that demonstrates an individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:
 - a. Failure to comply with the requirements of this chapter;
 - b. Fraudulent, dishonest, or deceitful misstatement or omission in the application for a commission as a notary public submitted to the secretary of state;
 - c. A conviction of the notary public or applicant of any felony or a crime involving fraud, dishonesty, or deceit;
 - d. A finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty, or deceit;
 - e. Failure by the notary public to discharge any duty or responsibility required of a notarial officer, whether by any provision in this chapter, any rules of the secretary of state, or any federal or state law;
 - f. Use of false or misleading advertising or representations by the notary public representing that the notary public has duties, rights, or privileges that a notary public does not have;
 - g. Violation by the notary public of any rule of the secretary of state regarding a notary public;
 - h. Denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state; or
 - i. Failure of the notary public to maintain an assurance as provided in section 44-06.1-20.
2. If an applicant for a commission as a notary public is denied the commission or a commission is revoked or suspended, the applicant or notary public is entitled to timely notice and hearing in accordance with chapter 28-32. The notice may provide that the person may not perform any notarial acts during the pendency of the revocation proceeding. A notary whose commission is revoked may be denied a new commission for a period of up to six years following the date of revocation.
3. The authority of the secretary of state to deny, suspend, refuse to renew, or revoke a notary public's commission does not prevent the secretary of state or an aggrieved person from seeking and obtaining other remedies provided by law, whether criminal or civil.

4. A notary public who exercises the duties of a notary's office with knowledge that the notary's commission has expired or has been revoked or that the notary is disqualified otherwise or any other person who acts as a notary or performs a notarial act without a lawful notary commission is guilty of an infraction, and, if appropriate, the notary's commission must be revoked by the secretary of state using the procedure under chapter 28-32.
5. The secretary of state may impose a lesser sanction for a violation of any provision of this chapter if determined appropriate by the secretary of state under the pertinent facts and circumstances. A lesser sanction includes imposition of a civil penalty not to exceed five hundred dollars or a letter of reprimand.
6. Any person may file a complaint with the secretary of state seeking denial, revocation, or suspension of a commission issued or to be issued by the secretary of state. The secretary of state shall provide a complaint form. The complainant shall use that form and the form must be verified under oath by the complainant or duly authorized officer of the complainant. If the secretary of state determines that a complaint alleges facts that, if true, would require denial, revocation, or suspension of a commission, the secretary of state shall initiate a hearing without undue delay. If the secretary of state determines a complaint does not state facts warranting a hearing, the secretary of state may dismiss the complaint. The secretary of state may initiate a hearing for denial, revocation, or suspension of a commission on the secretary of state's own motion.
7. Any person whose commission has been revoked or suspended may apply to the secretary of state for reinstatement of the commission or termination of the suspension.

44-06.1-22. (Effective after July 31, 2013) Database of notaries public.

The secretary of state shall maintain an electronic database of notaries public:

1. Through which an individual may verify the authority of a notary public to perform notarial acts; and
2. Which indicates whether a notary public has notified the secretary of state that the notary public will be performing notarial acts on electronic records.

44-06.1-23. Prohibited acts.

1. A commission as a notary public does not authorize an individual to:
 - a. Assist in drafting legal records, give legal advice, or otherwise practice law;
 - b. Act as an immigration consultant or an expert on immigration matters;
 - c. Represent an individual in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship, or related matters; or
 - d. Receive compensation for performing any of the activities listed in this subsection.
2. A notary public may not engage in false or deceptive advertising.
3. A notary public, other than an attorney licensed to practice law in this state, may not use the term "notario" or "notario publico".
4. A notary public, other than an attorney licensed to practice law in this state, may not advertise or represent that the notary public may assist in drafting legal records, give legal advice, or otherwise practice law. If a notary public, who is not an attorney licensed to practice law in this state, in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media, and the internet, the notary public shall include the following statement, or an alternate statement authorized or

required by the secretary of state, in the advertisement or representation, prominently and in each language used in the advertisement or representation: "I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities. If the form of advertisement or representation is not broadcast media, print media, or the internet, and does not permit the inclusion of the statement required by this subsection because of size, it must be prominently displayed or provided at the place of performance of the notarial act before the notarial act is performed.

5. Except as otherwise allowed by law, a notary public may not withhold access to or possession of any original record provided by an individual who seeks performance of a notarial act by the notary public.
6. A notary public may not notarize a signature on a document if:
 - a. The document was not first signed or re-signed in the presence of the notary public, in the case of a verification on oath or affirmation, or in the case of an acknowledgment, was not acknowledged in the presence of the notary public.
 - b. The name of the notary public or the spouse of the notary public appears on the document as a party or in which document either individual has a direct beneficial interest or if either individual appears as a signatory to a petition within the meaning of section 1-01-50. A notarial act performed in violation of this subdivision is voidable.
 - c. The signature is that of the notary public or the spouse of the notary public.
 - d. Except as otherwise provided by law, the notary public uses a name or initial in notarizing the document other than as it appears on the notary's commission. However, such an act by a notary by itself does not affect the validity of the document.
 - e. The date of the verification on oath or affirmation or acknowledgment is not the actual date the document is to be notarized or the verification on oath or affirmation or acknowledgment is undated.
 - f. The signature on the document or the notarial certificate is not an original signature, except as otherwise provided by law.
 - g. The notary is falsely or fraudulently signing or notarizing a document, verification on oath or affirmation, or acknowledgment or in any other way is impersonating or assuming the identity of another notary.
 - h. The signature is on a blank or incomplete document.
 - i. In the case of a document drafted in a language other than English, the document is not accompanied by a permanently affixed and accurate written English translation.
 - j. Except as otherwise provided by law:
 - (1) The document is a copy or certified copy of any vital record authorized or required by law to be registered or filed;
 - (2) The document is a copy or certified copy of an instrument entitled by law to be recorded; or
 - (3) The document is a copy or certified copy of a public record containing an official seal.
 - k. The notary did not obtain satisfactory evidence of the identity of the signer, unless the signer is personally known to the notary.

7. A notary public may not make or purport to make any certified copy of a vital record, a recordable instrument, or a public record containing an official seal as described in subdivision j of subsection 6.
8. A notary public must affix the notary's seal to each verification on oath or affirmation or acknowledgment at the time of performing the notarial act.

44-06.1-24. Validity of notarial acts.

Except as otherwise provided in this chapter, the failure of a notarial officer to perform the duties or meet the requirements specified in this chapter does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this chapter does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on other laws of this state or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform the act.

44-06.1-25. Rules.

The secretary of state may adopt rules to implement the provisions of this chapter. Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The rules may include:

1. Provisions prescribing the manner of performing notarial acts regarding tangible and electronic records.
2. Provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident.
3. Provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures.

44-06.1-26. Notary public commission in effect.

A commission as a notary public in effect on the effective date of this Act continues until its date of expiration. A notary public who applies to renew a notary public commission after the effective date of this Act shall comply with the provisions of this chapter. A notary public, in performing notarial acts after the effective date of this Act, shall comply with the provisions of this chapter and is subject to refusal to renew the notary public's commission or revocation or suspension of the notary public's commission under this chapter.

44-06.1-27. Name change.

A notary who has legally changed the notary's name shall submit to the secretary of state a rider to the notary's surety bond stating both the old and new names, the effective date of the new name, and a ten dollar fee within sixty days of the name change. Upon receipt of the rider and fee, the secretary of state shall issue a certificate of authorization that a notary public may use to obtain a new stamping device. Once the authorization is on file, the secretary of state shall issue a commission with the notary's new name. After notification to the secretary of state of the name change and until a new stamping device is obtained, the notary may continue to use the old stamping device but must sign any notarial certificate substantially as follows:

Notary public North Dakota

Formerly known and commissioned as

My commission expires

Notary Seal

44-06.1-28. Fees to be charged for notarial acts - Penalty.

A notary public is entitled to charge and receive not more than five dollars per notarial act. A notary who charges a fee exceeding that amount is guilty of an infraction. It is an infraction for any person other than the notary public to impose or collect any monetary fee, charge, or commission in connection with the notarization of any document. A notary may charge a travel fee when traveling to perform a notarial act if:

1. The notary and the person requesting the notarial act agree upon the travel fee in advance of the travel; and
2. The notary explains to the person requesting the notarial act that the travel fee is both separate from the notarial fee and neither specified nor mandated by law.

44-06.1-29. Savings clause.

The provisions of this chapter do not affect the validity or effect of a notarial act performed before the effective date of this Act.

44-06.1-30. Relation to Electronic Signatures in Global and National Commerce Act. The provisions of this chapter modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but do not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

SECTION 4. AMENDMENT. Section 44-08-06 of the North Dakota Century Code is amended and reenacted as follows:

44-08-06. Dimensions of seal of court or officer.

Except as otherwise provided ~~in section 44-06-04~~ by law relating to notary seals ~~stamps~~, upon every seal of a court or officer of this state required or authorized to have a seal, there must be engraved the words "State of North Dakota" and the name of the court or office in which the seal is to be used. All such seals, except the great seal, must be surrounded by a border, and be either one and five-eighths inch [41.28 millimeters] in diameter or if of a rectangular design, may be up to or equal to seven-eighths inch [22.23 millimeters] vertically by two and five-eighths inches [66.68 millimeters] horizontally.

SECTION 5. AMENDMENT. Section 47-19-18 of the North Dakota Century Code is amended and reenacted as follows:

47-19-18. Deputies may take acknowledgments.

When any officer mentioned in ~~sections~~ section 47-19-14, 47-19-14.1, and 47-19-14.2 is authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of the principal as deputy, or by such deputy as deputy.

SECTION 6. REPEAL. Chapter 44-06 and sections 47-19-14.1, 47-19-14.2, 47-19-14.3, 47-19-14.4, 47-19-14.5, 47-19-14.6, 47-19-14.7, and 47-19-14.8 of the North Dakota Century Code are repealed.

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-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1136.

House Vote: Yeas 94 Nays 0 Absent 0

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State