

2009 SENATE JUDICIARY

SB 2322

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2322

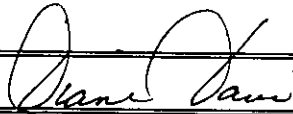
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 28, 2009

Recorder Job Number: 8019

Committee Clerk Signature



Minutes: **Senator D. Nething, Chairman**

Relating to electronic signatures and discipline of notaries public

Secretary of State Al Jaeger – See written testimony. He explains the bill. He wants it clear that a notary cannot sign for a spouse. It is also violation for the notary to notarize a signature without first obtaining satisfactory evidence as to the signer's identity unless the signer is personally known to the notary. He mentions a couple cases that have come that were forgeries. This bill makes it clear that violating any provision of this chapter is subject to the disciplinary proceedings.

Close hearing on 2322

Senator Olafson motions for a do pass

Senator Schneider seconds

Vote – 5 yes, 1 absent

Senator Olafson will carry

Date: 1/28/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES SB 2322
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen Olafson Seconded By Sen Schneider

| Senators | Yes | No | Senators | Yes | No |
|---------------------------------|-----|----|---------------------|-----|----|
| Sen. Dave Nething - Chairman | X | | Sen. Tom Fiebiger | X | |
| Sen. Curtis Olafson - V. Chair. | X | | Sen. Carolyn Nelson | | |
| Sen. Stanley W. Lyson | X | | Sen. Mac Schneider | X | |
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Total (Yes) 5 (N) _____

Absent 1

Floor Assignment Sen. Olafson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2322: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2322 was placed on the
Eleventh order on the calendar.

2009 HOUSE JUDICIARY

SB 2322

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2322

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/16/09

Recorder Job Number: 10970

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2322.

Al Jaeger, Secretary of State: Sponsor, support (attachment). This bill does several things. First of all, on page 1, line 11, section 1, it changes the word shall to may, as it pertains to the adoption of rules related to electronic signatures. This section of law was first adopted in 1997 and rules were adopted. Then in 2001, the Electronic Transactions Act was passed and the adopted rules were reversed at that time. Rep. Klemin is on the Uniform Law Commission for a Notarial Act; when they met in Chicago last week (Rep. Klemin was here and couldn't attend) we sent an observer for that particular drafting process. In Section 2, page 1, lines 23 and 24, this provision is being added to make it clear that a notary is prohibited from notarizing a petition on which a notary or his/her spouse as affixed their signature. We've discovered that although the law does kind of say that you aren't supposed to notarize something that you/ spouse are part of; technically speaking, what's happening is that the notary is just notarizing the signature of the person who is completing the affidavit. We've always maintained that if a spouse's signature or the notary's signature is on that petition, they are really a party to the situation. This just makes it clear in here for us. On section 2, page 2, lines 25 and 26, adds a prohibited act in that a notary is not to notarize a signature without first obtaining satisfactory

evidence as to the signer's identity unless the signer is personally known to the notary. We haven't had a lot of situations but we have had a couple where we had forgery situations where the notary has not secured the applications. We wanted stronger language in the law so that we have better places to pursue. In section 3, page 3, line 11, it makes it clear a notary is subject to the disciplinary proceedings in 44-06-13.2 for violating any aspect of the chapter on notarial notaries, even if it is not a prohibited act. This just helps us out, for instance, if they go against their notary stamp or does some other thing; we just want to have a solid basis to pursue. As soon as they deny the process, we have somewhat of a running file on notaries, and depending on the circumstances are, we do a preliminary type of research or investigation, and in some cases it results in some kind of a fine, reprimand, or something on that kind of order. Then we work with the Civil Litigation Division of the AG's office depending on the nature of the violation. We have not really had to revoke anyone's notary commission. We have one in process right now, but this hasn't happened very often. Most of the time, depending on the seriousness of the violation, it does get them in the pocketbook to pay a fine up to \$150, \$50 or a reprimand. This just provides these little changes to make sure that we are on solid footing when we pursue these violations. A notary, after they take their oath, does become an officer of the State, and has responsibility to keep a notary file of their actions.

Rep. Delmore: As you look at the bill, are the notaries familiar with these provisions.

Al Jaeger: It's really not a gray area, because this isn't opening anything up. There are other parts in there that say for instance, that a notary is supposed to affix their notary stamp. We are adding these provisions so that it takes it out of the gray area and makes it clear. A notary is supposed to know the whole chapter by heart. The fact is that most of them don't. The boss comes in and says that they want the employee to be a notary public. Do whatever it takes to get that. They apply, we send them the rules, etc. and all they know is that the boss keeps

coming in and wants them to affix their notary stamp; they haven't witnessed the signature, they haven't met the person, they don't know the person, this is viewed as a clerical function. I wouldn't be too concerned about the notary, when they become a notary they become an officer of the State. They are supposed to know the whole chapter.

Rep. Delmore: Are there a lot of violations now, is that why we need this provision added; so that we can jerk these guys and tell them that they're not going to be a notary any more. Are serious violations being committed in the State?

Al Jaeger: I'm already doing this; it just makes it clear that I have the authority to carry out these actions. The fact is that within the last year, I have written about 132 letters of reprimand. I have fined probably another 40-50 notaries. The thing that is somewhat disconcerting to me is that out of all of those that we do, I probably did less than a handful with outside sources. I find most examples are when a notary notarized their own signature on the application submitted to my office; they do a lot of things that notaries are not supposed to do. If it comes in on a document that is related to a notary application or a notary renewal, I can't ignore that. I find it frustrating that these people, who are supposed to know the law, are violating the law on the very documents that they send in to my office. I can't overlook it.

Rep. Delmore: That is probably because they are not familiar with the rules. If my job is to notarize documents all day, every day, I am familiar with the law, as you are very familiar with the law because it is your job. But a person who doesn't do it that often, doesn't know.

Al Jaeger: They have no business being a notary if they don't know the rules. They become an officer of the State. They take an oath of office and it is their responsibility to know the rules. We are trying to make them aware that this is not just a clerical duty.

Rep. Delmore: You have to agree that some of the officials of the State are paid a little bit better than some of these people on the job. I just don't want to see somebody's commission

● jerked because they made one judgment error where they didn't know some provision in the law.

Al Jaeger: That is why the law has been modified over the years. At one time, the law said that my only recourse was to revoke a commission. Then at the request of an AG's opinion, he said that I could do less than that. We have been establishing that in law; that I can revoke, suspend, fine, and reprimand. So if it is something like a date that is missing, I can issue a reprimand. If someone has notarized something without a signature on the document, I take that more seriously; that's usually \$150.00. Right now, we've only had one commission that has been revoked, and that involves a case where I think a forgery is involved. We are allowed to fit the punishment to the crime.

Rep. Delmore: So you can deny, revoke, or suspend someone's commission under this part ● of the law.

✓ **Al Jaeger:** I think if you read the entire section of the law, you would find that it says that I have the ability to do less. In crafting this, the Legislative Council left out a lot of the other parts. It does say it in there.

Rep. Wolf: On page 1, lines 23-24, I know that there are a lot of petitions that we sign and circulate for various reasons; people will come and ask me to notarize a petition so that it can be circulated for whatever reason. Then they sign it and have it notarized. Does this added language prohibit me from notarizing something like that?

Al Jaeger: No, the purpose of this is so that you don't notarize a petition that you or your spouse has signed. It doesn't mean that you can't notarize a petition as long as you or your spouse has not signed it. You and/or your spouse can still sign a petition, just that you can't ● notarize your own signature.

Rep. Wolf: All I'm doing is notarizing the person who signed it at the time.

Al Jaeger: Yes. You can sign a petition, just don't notarize it.

Rep. Wolf: Why can't I notarize it?

Al Jaeger: Because the law says you're not to notarize anything that you're a party to. We're just making sure that it covers these issues. This is to clarify the law and make sure that we are on solid footing for what we do.

Ch. DeKrey: Thank you. Further testimony in support. Testimony in opposition or neutral.
We will close the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2322

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/17/09

Recorder Job Number: 11097

Committee Clerk Signature

D. Penrose

Minutes:

Chairman DeKrey: We will take a look at SB 2322. What are the committee's wishes?

Rep. Wolf: I move a Do Pass.

Rep. Dahl: Second.

12 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Rep. Boehning

Date: 3/17/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2322

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee LC Amendment # _____

Action: DP DP / As Amended & Rerefer to Approp.
 DNP DNP / As Amended

Motion Made By Rep. Wolf Seconded By Rep. Dahl

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------|-----|----|-----------------|-----|----|
| Ch. DeKrey | ✓ | | Rep. Delmore | ✓ | |
| Rep. Klemin | ✓ | | Rep. Griffin | ✓ | |
| Rep. Boehning | ✓ | | Rep. Vig | ✓ | |
| Rep. Dahl | ✓ | | Rep. Wolf | ✓ | |
| Rep. Hatlestad | ✓ | | Rep. Zaiser | ✓ | |
| Rep. Kingsbury | ✓ | | | | |
| Rep. Koppelman | | | | | |
| Rep. Kretschmar | ✓ | | | | |
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Total (Yes) 12 (No) 0 (Absent) 1

Floor Carrier: Rep. Boehning

Vote is amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 17, 2009 11:34 a.m.

Module No: HR-48-5080
Carrier: Boehning
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

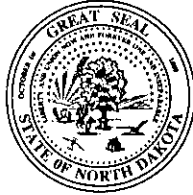
SB 2322: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2322 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2322

Attachment 1
SB 2322

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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 28, 2009

TO: Senator Nething, Chairman, and Members of the Senate Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: SB 2322 – Electronic Signature and Notaries Public

Page 1, line 11: Changes the word shall to may, as it relates to the adoption of rules related to electronic signatures. This section of law was first adopted in 1997 and rules were adopted. In 2001, the Electronic Transactions Act was passed (N.D.C.C., Chapter 9-16) and the rules (ND Administrative Code 72-05-04) referred to in this section were reversed. However, rather than removing the rules requirement in this section of law, legal counsel suggested the word "shall" be changed to "may", just in case a situation should arise where rules need to be amended or adopted in the future.

Page 1, lines 23 and 24: Includes the provision that a notary cannot notarize a petition that the notary or his or her spouse has signed (referenced cite is on at the bottom).

Page 2, lines 25 and 26: Makes it a violation if a notary notarizes a signature without first obtaining satisfactory evidence as to the signer's identity unless the signer is personally known to the notary.

Page 3, line 11: Makes it clear that violating any provision of this chapter is subject to the disciplinary proceeding in N.D.C.C. § 44-06-13.2.

1-01-50. Filing or presentation of petitions - Time limit.

Whenever in this code provision is made for the filing or presentation of a petition with or to any officer or governing body or board of the state or any agency, instrumentality, or political subdivision thereof as a prerequisite to the calling of an election, or the performance or prohibition of any act, such petition must be filed with or presented to such officer or governing body or board not later than one year from the date such petition is first placed in circulation, or the date the first signature is affixed thereto, whichever date is the latest. If a petition is required by law to be filed or presented on or before a specific or certain date, the petition shall be filed or presented, and physically be in the possession of the person or office designated to receive such petition before four p.m. on such date. The provisions of this section shall not apply in any case in which the law governing a particular petition specifies a shorter or a longer period of time or a different time of day.

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March 16, 2009

TO: Rep. DeKrey, Chairman, and Members of the House Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: SB 2322 – Electronic Signature and Notaries Public

Section 1, Page 1, line 11: Changes the word shall to may, as it pertains to the adoption of rules related to electronic signatures.

This section of law was first adopted in 1997 and at that time, rules were adopted. Then, in 2001, the Electronic Transactions Act was passed (N.D.C.C., Chapter 9-16) and the adopted rules were reversed (known then as ND Administrative Code 72-05-04).

Although the mandate to adopt rules still exists in the law, the Secretary of State has not adopted any because of the Electronic Transactions Act. However, rather than delete the "shall" mandate to adopt rules, it is being changed to "may" adopt rules. This is based on advice from the agency's legal counsel in order to cover any unforeseen situation that might arise in the future, where rules need to be adopted and amended.

Section 2, Page 1, lines 23 and 24: A provision is added to N.D.C.C. § 44-06-13.1(1)(b), to make it clear a notary is prohibited from notarizing a petition on which the notary or his or her spouse has affixed their signature. The added text refers to N.D.C.C. § 1-01-50 (see bottom), to cover every type and circumstance in which a petition is circulated.

Section 2, Page 2, lines 25 and 26: Adds a prohibited act to N.D.C.C. § 44-06-13.1 in that a notary is not to notarize a signature without first obtaining satisfactory evidence as to the signer's identity unless the signer is personally known to the notary.

Section 3, Page 3, line 11: Makes it clear a notary is subject to the disciplinary proceedings in N.D.C.C. § 44-06-13.2 for violating any of the provisions of this chapter, even if it is not one of the prohibited acts listed in N.D.C.C. § 44-06-13.1.

1-01-50. Filing or presentation of petitions - Time limit.

Whenever in this code provision is made for the filing or presentation of a petition with or to any officer or governing body or board of the state or any agency, instrumentality, or political subdivision thereof as a prerequisite to the calling of an election, or the performance or prohibition of any act, such petition must be filed with or presented to such officer or governing body or board not later than one year from the date such petition is first placed in circulation, or the date the first signature is affixed thereto, whichever date is the latest. If a petition is required by law to be filed or presented on or before a specific or certain date, the petition shall be filed or presented, and physically be in the possession of the person or office designated to receive such petition before four p.m. on such date. The provisions of this section shall not apply in any case in which the law governing a particular petition specifies a shorter or a longer period of time or a different time of day.