

2011 HOUSE JUDICIARY

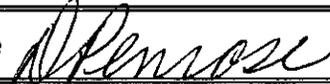
HB 1136

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1136
January 19, 2011
13104

Conference Committee

Committee Clerk Signature 

Minutes:

Chairman DeKrey: We will open the hearing on HB 1136.

Rep. Klemin: Sponsor, support. This bill was introduced at the request of the ND Commission on Uniform State Laws (see attached 1). The commission itself is by no means uniform. Rep. Kretschmar is also a member of the ND Commission. The bill that we're looking at today, would adopt the Revised Uniform Law on notarial acts. This was a project that has been ongoing for some time. The National Uniform Law Commission, originally adopted a Uniform Law on Notarial Acts in 1982. It's been addressed going back to the late 1800's; in fact I think ND's law starts in the late 1800's with a notary law. The Uniform Law Commission has a lot of acronyms, this one is RULONA (Revised Uniform Law on Notarial Acts). The National Uniform Law Commission had a drafting committee that put together this revised act over the course of the last few years. This was then adopted by the Uniform Law Commission on the National level last year. I had the privilege of serving on the drafting committee for this act and worked on these provisions. On the handout it briefly states why states should adopt the revised law and there is a summary of the revised law and maybe it would be easier for me, rather than going through this summary to just outline a few things in the bill. Keep in mind that we do have a law on notaries already. That law that we have already would be repealed as a result of passing HB 1136.

HB 1136 sections 1, 2 and 3 of the bill are simply some changes that are necessary because of the repeal of chapter 44-06, which is existing notary law. The new notary act itself starts with section 4 on page 2 of the bill. The first section has the definitions and I don't think that there is anything in the definitions that needs any explanation.

Section 5 on page 3 states that it applies to notarial acts performed after the effective date of section 4-32 which would be the revised Uniform Law.

Section 6, provides the authority for the notary to perform notarial acts.

Section 7 contains certain prerequisites or requirements for certain notarial acts including acknowledgement on subsection 1 which is usually used as a requirement for documents that are recorded with the county registrar, like deeds, mortgages and that sort of thing. The verification on oath or affirmation is usually done in connection with an affidavit.

Section 8 requires a personal appearance before the notary in order to acknowledge a document or for verification on oath for an affidavit.

Section 9 requires the notary to obtain identification of the individual that's appearing before him or her, unless they have personal knowledge of that person, who he is. There is a list of things that serve as satisfactory evidence of identification.

Section 10 gives the notary the authority to refuse to perform a notarial act. There was a question raised as to whether if someone appeared before a notary, can they say no, I'm not going to notarize this if they provided the identification and so forth. All this section does is to say that yes if they're not satisfied, that the individual is competent or has capacity, or the signature is not knowingly or voluntarily made, they can refuse to perform a notarial act. We have, for example, wills. We have what is called a self-proved will. It used to be a long time ago, that if you had a will with two witnesses and then when the person died with the will, you had to go round up the witnesses and the witnesses had to say yes, I was there when this person signed the will. Now, we have the self-proved will in which the witnesses are still there, but it's also notarized and that becomes a competency issue sometimes as to whether the person signing the will was competent when they signed it or not. If the notary is uncomfortable about that issue, the notary can refuse to notarize that will.

There is a provision in section 11 about what to do if the individual is unable to sign, if that person is disabled somehow and can't physically sign, then that person still has to appear before the notary, but can designate someone with him to sign on his behalf and then there is a provision that what the notarial officer puts on there that it's signed at the direction of the person.

Section 12 deals with notarial acts in this state, who can do it, no particular change there.

Notarial acts in section 13 deal with notarial acts in another state. For example, it says that a notarial act performed in another state has the same affect under law of this state as if performed by a notarial officer in this state, if the act is performed in that state, is performed by the same kind of people that do it here, notary, judge or other persons authorized by law.

Section 14 deals with the same thing relating to Tribes, if there is that type of authority with the Tribe.

Section 15, same kind of provision of someone acting under federal authority performing notarial act.

Section 18 is the same, recognition of someone doing it in a foreign state, means another government or federally recognized American Indian tribe. One term you may not be familiar with is on page 8, line 16, subsection 5, an apostille. An apostille in the form prescribed by the Hague Convention. An apostille is simply a certification by some other person that the notary really is authorized to do those notarial acts. That's part of this international treaty known as the Hague Convention.

Section 17 deals with the certificate of the notarial act, that's the part where the notary signs and dates it on the form. It specifies through this section the requirements for the certification or the certificate that is required for the notarial act.

Section 18 requires a notary to have an official stamp; this is stamped on the document that is being notarized.

Section 19 deals with the specifications for the stamping device, and what happens if it's lost or stolen; the person has to notify the Secretary of State. Section 20 deals with a journal that the notary is required to keep, to keep track of all the notarial acts that the person does.

Section 20 is included in this bill, but under the Uniform Act, it is an optional section. Many states, probably most states, do require notaries to keep a journal. The reason for that is that it is evidence of the fact that a notarial act was done. That way if a question is raised on a document later as to whether that was a forgery or not, then the notary can look back in the journal and say that on such and such date, 4 years ago, I did notarize that document. Ordinarily notaries don't keep records of the documents that they notarized. They don't keep a copy of all the documents that they notarized. There was some other optional language within this optional section, that said that the journal requirement did not apply to individuals licensed to practice law in this state. That particular language, that should have been included in the bill in section 20, so line 27 should have read, a notary public, other than an individual licensed to practice law in this state, shall maintain a journal. The reason for that is because lawyers in law firms do keep copies of all documents that they notarize in their office, whereas a notary normally would not. I understand that Secretary of State, Al Jaeger, may have an amendment to delete this optional section as not needed in ND.

Section 21 deals with notification regarding performance of notarial acts on electronic records. We've adopted a number of laws in the past already in ND relating to electronic records and there is now technology available for electronic notarizations on electronic records, so we don't actually have any paper, no paper for the document, no paper for the notary either, but there is a technology available and there are several companies that produce that. There was a demonstration given at one of the meetings by the vendors of electronic notary technology and so

that it is possible to electronically notarize an electronic document. This says that before people can start doing electronic notarizations, that the Secretary of State has to approve this kind of technology that they are using.

Section 22, this really brings us into the modern world on electronic documents because they are becoming more prevalent, there are a number of federal laws, and we've already adopted some other state laws on electronic documents. Section 22 sets out some of the forms for the notary certificates and the various types that are used for acknowledgements, verifications, etc.

Section 23 sets out the qualifications required in order for a person to be commissioned as a notary public. The Secretary of State is the person who issues those commissions to notary publics.

Section 24 is entitled, Examination of Notary Public. This one provides that a notary is required to pass an examination administered by the Secretary of State in order to be issued a commission. This is also an optional section under the Uniform Act, but we've included these optional sections in here in the bill so that the committee can determine whether we want to actually require that or not. I think that Mr. Jaeger's got an amendment that takes this one out of the bill, too.

Section 25 relates to the commission that's issued where it gives the Secretary of State authority to deny a commission or refuse to renew one, revoke or suspend the commission for various types of conduct. It's fairly broad-based as to what the authority of the Secretary of State is. If a commission is denied, revoked, suspended, etc. then subsection 2, beginning on line 27 gives the applicant for the commission the right to a notice of hearing under our administrative agencies practice act.

Section 26 requires the Secretary of State to maintain an electronic database of notaries.

Section 27 relates to a number of prohibited acts as to what a notary may not do and for example, I can't notarize my own signature. You'd think that would be elementary but just because you've been commissioned as a notary that doesn't mean that you, as a notary, can assist in drafting legal records. This hasn't been much a problem in ND, but in larger states where they have large populations of people from other countries, particularly Hispanics. Since the notaries may not be attorneys, they can't help draft immigration documents. Whereas this may not be much of an issue in ND, it could be an issue, but you will see on line 14, a notary may not act as an immigration consultant or expert on immigration matters. This is a big problem in a lot of states. That also goes down on lines 20 and 21 on page 17, a notary public, unless you are an attorney licensed to practice law, may not use the term "notario" or "notario publico". In some other countries, those are terms that are used which have a different meaning than what we think of as a notary here in the United States. In some states, mainly Hispanic areas, notaries are advertising

themselves as notario or notario publico. When some immigrant comes from one of these other countries comes to the US and they see a sign advertising a notario publico they think it is the same kind of person that's back in their own country, that can do all of these things that notaries are not permitted unless they are lawyers in the US. They can advertise themselves as a notary public, but to use that foreign term notario publico means something different to these people who are immigrants and you can't do that.

Section 28, on line 18 relates to the validity of notarial acts.

Section 29 permits the Secretary of State to adopt rules to implement various sections of this act if there is a need to do anything, and the idea is to give the Secretary of State comprehensive authority to cover things that may relate to specific technologies, technical specifications, performance of notarial acts with respect to electronic records and various other things. This is permissive, the Secretary of State's not required to adopt any rules, but it gives him the authority if there is a need to do that.

Section 30 deals with the notary public commission that's in effect now, and will continue until it expires and then you have to renew it. You'll have to comply with the new part of the law for renewals.

Section 31 is your typical savings clause. That this new law doesn't affect the validity of a notarial act done before the effective date.

Section 32 is a reference to other electronic signatures in global national commerce.

Section 33 is an amendment to delete some references to other statutes that aren't needed any more.

Section 34 is a repeal. Chapter 44-06 is our existing notary law that's being repealed. Then you will see a list of section 47-19-14.1 through 14.8. That's the title in the NDCC relating to record title for real property and those 8 sections actually comprise what is called Uniform Recognition of Acknowledgements Act. That Uniform Recognition of Acknowledgements Act is not needed anymore, because all of its provisions are being incorporated into the new notary law. Finally the reference to 47-19-55 is also in the real property record title section, and that is a section relating to the authority of ND notaries in other states which won't be needed anymore because of the changes that are being put into this bill in the new law.

That is really a short summary of the notary bill that is before you. The drafting committee and the National Uniform Law Commission did not put in certain kinds of sections that may be particular to a state. For example, there's no penalty section in here because that can vary considerably from one state to another. So really the idea there was that if states want to provide for a penalty in this bill, they can put it in themselves. There are some other things like that that are unique to the various

state laws and we've got some other provisions in ND law that we might want to keep as well.

Rep. Delmore: Are there big changes in this Uniform Law that weren't included. It seems like the journal requirement by the notary might be something we haven't required before. As you went through and drafted this, when you looked at current ND law, are there big changes that you can pinpoint in here or not too much.

Rep. Klemin: I don't think there are big changes, it's really just bringing the whole thing up to date because it's been like 20 years since the last time it was done. There have been a lot of technical advances that have happened that require updating. There have been some court cases in some places that had raised some questions that needed to be resolved through this. I don't think there are big changes other than the journal requirement. We don't have a journal requirement, but actually most states do, and that's why it's in the Uniform Act. The test to become a notary that is a new requirement. A lot of states have a test, and maybe there are good reasons for some people to know what a notary is supposed to do before they're issued a commission and go out and start notarizing. Mr. Jaeger sends out a newsletter about every year, in which he lists all the violations that have occurred by people using their notaries inappropriately. It might be worthwhile to have some education on what a notary is supposed to do and what not to do before they issue their commission. But as I mentioned, that is an optional section in here.

Rep. Delmore: How many sections are optional.

Rep. Klemin: Two.

Rep. Delmore: Section 20 I thought you said was one.

Rep. Klemin: Section 20 for the journal and Section 24 on page 15 for the examination.

Rep. Steiner: Has the Secretary of State always had the opportunity to make rules, on page 18, is that rulemaking something that is new and would there be a need to have rulemaking with a notary in this bill.

Rep. Klemin: That's probably a question that Mr. Jaeger can answer better than I as to whether historically if he's always had the power to adopt rules on notaries or not, but he would under this bill. It is permissive language, he doesn't have to do anything if he doesn't want to.

Rep. Kretschmar: Are the amounts in the bill for a fee and a bond amount, are they the same as current law or is there a change there. I think it's \$36 for the fee and then a \$7500 bond.

Rep. Klemin: That's not in the bill. Those are a couple of things that are unique to ND. What section are you referring to specifically.

Rep. Kretschmar: The fee that is charged to receive a notary commission and then the requirement for a bond, too. I was just wondering if those were the same as current law.

Chairman DeKrey: Thank you. Further testimony in support.

Al Jaeger, Secretary of State: Support (see attached 2). Let me answer some of the questions that have been talked about. First of all, this is the final draft from the Uniform Law Commission. It's 54 pages and they have items in there and then they have a lot of comments about why. What you have in front of you, HB1136 is a product of what the legislative council took out of here. Another matter that I will be referring to, not that long ago, January 13, the National Association of Secretaries of State put together this. First of all, I would have to say that a lot of what the Uniform Law brought forth, we don't have a problem with. I do need to add a "but". Our first request is that we're going to encourage the Committee to adopt a hog house amendment. I'll explain the reasons why and I've talked with Rep. Klemin about that and maybe a subcommittee could be appointed because of what happened yesterday. Due to the power outage, I couldn't even rough draft anything out with that. As Rep. Klemin mentioned, there are two sections of the bill, section 20 and section 24 that we would ask, that since they are optional, that we would ask that they not be adopted. At this point, we think it would be better to wait on several items. We encourage our notaries to maintain a journal, but it isn't required right now, and according to the survey that was completed by the National Association of Secretaries of States, there are 17 states that currently mandate a journal. It certainly isn't all of them. As far as the exam, there are only 12 states that require an exam. Would more education be valuable, as Rep. Klemin alluded to, we do an annual newsletter where we list all of the settlements that we've actually had with notaries that have done something wrong. That doesn't even begin all of the letters of reprimand that I send out, which numbers during the course of the year several hundred. Would education be important, it certainly is. Our hope has been in the office is that we have position that we are going to be filling, that will be really enhancing our website and a lot of our communication. We hope to have a lot of things on our website for notaries to use, items that aren't there at this time. To simplify things for the moment, we would encourage you to not include those two sections. Another concern, as the bill is currently written, it repeals the chapter on notary publics, it's just gone. What you see in front of you is actually incorporated into chapter 44-08 which is titled Miscellaneous Provisions. My concern is that our notary stuff is going to get lost. We need to have a separate chapter devoted strictly to notary information. The other hand-out that I gave to you (see attached 3). What I gave to you, with the exception of the last page, is what we give to notaries. This is sent out after every bi-annual session during the summer, this is the notary law, this is what governs it, except for the last page. I have marked up what would be repealed except for the one, I didn't line through the 44-06 because I want to make

reference to that. That chapter 44-06 is notary publics exclusively. A lot of the other stuff as Rep. Klemin mentioned, recognition of certain things, forms of acknowledgement, all of that is incorporated in the draft and we're okay with that. The other concern we have is there is no logical sequence to the arrangement of the sections and that's another reason to support a hog-house. For instance, from several sessions now, a lot of the drafting has included definition sections at the beginning of the chapter. That really helps because it defines the words that follow, and that's helpful. We think that the qualifications of the notary public should be early in the chapter, and now it's in section 23. What's happened in the drafting is that the qualifications of becoming a notary, the process, is scattered throughout the bill as you see it and I would like to see it lined up to show what is needed to become a notary. Here are the qualifications to become a notary, here are things that you are allowed to do, here are things you aren't allowed to do. For the most part, that language is in there, it's just in a bad sequence, rather than to come in and start on page 20, line 10-20, delete that and add it in earlier, I think a hog-house would be much better. I have other examples, the official stamp is covered in section 18, well you need a stamp when you're a notary and again that should be upfront. The bill also refers to a stamp or embosser. In 2003, the legislative assembly adopted a bill that we put forth that embossers are no longer authorized in ND because an embosser, while I loved it when I was a notary, they can't be photocopied. Since 2003, we have in the law that a stamp has to be a stamp and not an embosser. The whole thing about the stamp is later on and should be closer to the front. We think these sections should be in a different sequence. Prohibited acts are, again in the wrong order. They have some but we have some additional prohibited acts. As Rep. Klemin correctly stated, one of the things that the Uniform Commission didn't do, is that they didn't put some detail into the draft. There are at least 10 places in this bill that refer to rules of the Secretary of State. If this is adopted the way it is, there are provisions in ND law right now, we would lose and we don't want to lose them. For instance, the disciplinary process. It addresses it in the bill, but it doesn't say certain things that we incorporated with the adoption into the law that I can revoke someone's commission, but I also have the right to have a less sanction. If you decide that you're a notary and we do have people who have notarized their own signature. That is \$150 fine if you do that. The only way that I can see that it could be done is because of the way the wording is. It says usually so and so appeared in front of me and I know them to be who they are. There is only way you can do that. You have to be standing in front of a mirror, look at the mirror, and say yep that's me so I can notarize my own signature. Those are issues that come up. There are certain things in here that talk about fines. If we did all of them we would have to hire a full-time person, so we use reprimands. We like to have those things covered. There are certain things that I think we can weave into this bill without destroying its uniformity. There are things in here, like making sure that the person that appears in front of you, is who they say they are. We have a little reference, but this is much more extensive, and we think that would be very valuable. My concern is, what it leaves out. We would rather not have to adopt rules because Rep. Koppelman is a dictator when it comes to adopting rules. I would rather have the entire body put the issues in the law. Two things we would

like with rules, and I think there is language that exists out there. We'd like to take what is in existing law and put it in this bill. There may be an occasion, particularly when it comes to the electronic notarization. We're not geared up for that just yet with our technology. There is an area that I can see us having the authority to adopt the rules. But in the 10 references I found in the bill, it says like the stamp, according to the rules adopted by the Secretary of State, that means that I have to go through the rule-making process. We already have in state law the dimensions of the notary stamp, what size it should be, what it should say on the stamp, it's already done, so we don't need to adopt rules, we just need to take those provisions of state law and put it in this bill. In response to Rep. Delmore's question – does this do anything that is different from current law. The two things that are optional, the journal and the testing, they aren't in current law. What this bill does do, which is substantially a change, it eliminates everything that we've adopted that, this is my 10th session, and anything that you have adopted that we brought forth, it essentially eliminates that. That's the concern. From that standpoint, that's a big concern. In response to Rep. Steiner's question, right now I don't have rule-making authority and again, except for the exception that we're talking about right now, I don't know that I need it as long as we have it in state law. While rules certainly have their place, and for electronic notarization it would probably be okay. What I just handed out to you (see attached 3) is what we give to them. This is the law. I think that is a much better way to handle this. We have over 11,000 notaries and in many places it's viewed as a clerical function. They say that the boss says I am supposed to be a notary. The mistakes that they make are that they don't put the date down, we have documents missing important information. We only get about 3-4 complaints a year from the outside. The ones that seem to be causing that from the outside, where there is a divorce involved and one attorney complains about another attorney who didn't do something right. The rest of the violations that come to our attention are on the very same documents that are submitted to my office, the notary application, the notary bond form, we don't have to go looking for them, they send them to us and how can I overlook a violation on a document submitted to my office. The other place, because they are aware of it and we appreciate it, is the licensing division of the AG's office. I always know when it's license renewal time for the liquor licenses because we invariably we get 10-15 down from upstairs where there was a violation. They didn't use their notary stamp, we get forms where the notary has notarized it, but the signature line is blank and yet the notary says that so and so appeared in front of me and I know them to be who they are. I need time to develop an amendment excluding the two sections that I mentioned and just put it in order and then taking those parts of our existing law and there are sections in there that I think we can easily just insert them in there. It seems to me, that since this is based on the Uniform Law, they need to realize that what we have done in lieu of adopting rules, we've just inserted them into our law.

Rep. Delmore: With the staff and access to this, I find it kind of amazing that you want a committee to spend time hog-housing this bill, when if you knew what you wanted changed, why wouldn't you bring the amendments to us.

Mr. Jaeger: We ran out of time. I can have the hog-house prepared, but in talking with Rep. Klemin I think he wanted to have some input in it. We put in a lot of hours and we didn't have time to get this bill ready.

Rep. Kretschmar: Are the fees to obtain a notary commission and the bond amount in the bill, are they same as current law.

Mr. Jaeger: My review was that it was in there; there is a bond requirement in there, I don't believe there is a personal surety in there, which of course is allowed under current law. We do have problems with the personal surety part when that is used because it really doesn't give a lot of meat to the situation. The bond, I don't think that anybody's ever collected on a bond, but the notaries are courted by several bond companies when their six years are up, they get all kinds of letters. Everybody wants them to buy a bond from them.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony.

Jack McDonald, Independent Community Banks of ND, and ND State Bar Association: We were going to be neutral because we were going to ask that you exercise your option to keep out sections 20 and 24. From the banking standpoint, we have a lot of people who are notaries and they do a lot of notarizations every day on all the contracts and uniform commercial code documents, and we believe that the keeping of a journal for 10 years would really become a very onerous task on all the bank employees. There is also some questions and confusion in the bill about who would be responsible for those journals, whether it is the banks themselves or the employees who are the notaries. So we would ask that the committee exercise the option that was outlined by Rep. Klemin and to delete sections 20 and 24. We don't really have a position on section 24.

Rep. Delmore: Do you do electronic signatures, do we allow that in the state at this time.

Mr. McDonald: Yes, I do to a limited extent, not on estate documents. I do a lot of bankruptcy work and we file all of our bankruptcy documents electronically, so we have to have a electronic signature for that. I am a notary, but I've never done electronic notarization as such in the state.

Chairman DeKrey: Thank you. We will close the hearing.

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1136
January 31, 2011
13698

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1136.

Rep. Klemin: I move the amendments from the Secretary of State's office.

Rep. Hogan: Seconded.

Chairman DeKrey: We now have the amendment before us on HB 1136.

Rep. Klemin: Explained the amendments from the Secretary of State's office (see attached 1). Al Jaeger, the Secretary of State has gone through the Uniform Notary Law; he hasn't actually changed anything in there except to take out the requirement of a journal, which was optional in the Uniform Act. He also removed Section 24 on examination requirements, which was also an optional provision in the Uniform Act. It was that everyone would be required to take an exam prior to becoming a notary public. There is one provision in there relating to electronic notarization, which will be coming and the notary database which is a computer program that the Secretary of State will have to set up. The Secretary of State would ask that this committee approve a delayed effective date for those two provisions to July 31, 2013 to allow him to get their software and hardware together to do this. We have then in this bill the uniform language and the existing ND state law that has now been included in this rewrite.

Chairman DeKrey: We will take a voice vote. Motion carried. We now have the bill before as amended. What are the committee's wishes in regard to HB 1136.

Rep. Koppelman: Just a comment before we vote, I've concluded that the best way to get something passed in this Assembly, is to have a really thick confusing long amendment or bill and no one asks any questions.

Rep. Maragos: I move a Do Pass as amended.

Rep. Beadle: Seconded.

House Judiciary Committee

HB 1136

1/31/11

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Rep. Klemin: I take issue with the assertion that this is long and confusing. It is long but not confusing.

Chairman DeKrey: If no further editorial comments, the clerk will call the roll on a Do Pass as Amended motion.

13 YES 0 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Klemin

VK
2/3/11
108 20

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1136

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for 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.

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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 license 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

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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

2018

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."

Renumber accordingly

Date: 1/31/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1136

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0211.01002 .02000

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Beadle

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury					
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Klemin

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

REPORT OF STANDING COMMITTEE

HB 1136: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1136 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for 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 license 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."

Renumber accordingly

2011 SENATE JUDICIARY

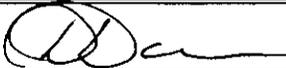
HB 1136

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1136
3/28/11
Job #16052

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to notarial acts

Minutes:

There is attached testimony

Senator Nething - Chairman

Representative L. Klemin- District 47 – See written testimony.

Senator Nething – Asked if served on this committee.

Rep. Klemin – Replied he did and this is the result of a four year process, this is a revision of the existing notarial act and basically an update of everything we already have. He goes on to explain the process of the Uniform Law Commission.

Senator Sitte – Asks about signing electronically or by sound. She wonders about the security issues involved with electronically signing.

Rep. Klemin – Responds that he saw demonstrations on the software that is used and it has very sophisticated security codes in them to uniquely identify various documents.

Senator Sitte – Asks him to explain apostille.

Rep. Klemin – Says the Hague Convention is an international association that tries to adopt standards for international use that are recognized worldwide. An apostille is a something that says this person is who I thought it was and this person is in fact a notary and has the authority to do the act that is being done on a particular document.

Senator Nelson – Asks him if this is Uniform Code.

Rep. Klemin – Replies it is with the items that have been included from existing ND law.

Senator Nething – Notes there are 8 consecutive sections in 4914.1 and all of Chapter 4406 has been repealed.

Senator Sitte – Asks if there are other states that have passed this and how long does it take for States to bring Uniform Code up to par so everyone is on the same page.

Rep. Klemin – Says most States have adopted the old one and will probably be adopting the revised one.

Al Jaeger – Secretary of State – See written testimony.

Senator Nething – Asks if there will be two sections for notary law.

Jaeger – Says they have taken Uniform Law and eliminated the journal and the examination and then take all the divisions that are being repealed and inserted them into this bill and that creates the new chapter 44-06.1.

Opposition – 0

Close the hearing on 1136

Senator Sitte moves a do pass

Senator Olafson seconds

Roll call vote – 6 yes, 0 no

Senator Nelson will carry

REPORT OF STANDING COMMITTEE

HB 1136, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1136 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1136

WHY STATES SHOULD ADOPT THE REVISED UNIFORM LAW ON NOTARIAL ACTS

The Revised Uniform Law on Notarial Acts (RULONA) was approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL or ULC) at its 2010 Annual Meeting. This Act updates and modernizes the 1982 Uniform Law on Notarial Acts, which itself was an update of the Uniform Recognition of Acknowledgements Act of 1968. Indeed, the ULC first addressed the issue in 1892 with its Uniform Acknowledgement Act. The 2010 revision was prompted by increasing variation amongst the states in their treatment of notaries public and notarial acts, by increasing nationalization of the banking and finance industries which exacerbated the problem of dealing with separate requirements in each locality, and with the evolution and expanding adoption of electronic communications and records in commercial transactions. RULONA is designed to modernize and clarify the law governing notaries public, their responsibilities and duties, and to provide a stable infrastructure for the performance of notarial acts with respect to electronic records.

RULONA harmonizes treatment of notarization of all records, whether on paper or electronic. It works together with the Uniform Electronic Transactions Act (1999) and the federal Electronic Signatures in Global and National Commerce Act (2000), as well as the Uniform Real Property Electronic Recording Act (2005). RULONA contains provisions which:

- Require that notarizations be performed by notarial officers: commissioned notaries public, judges and their clerks, and others, including attorneys, as authorized by other state law.
- Prohibit notarial officers from acting in any transaction in which the officer or his or her spouse, is a party or has a direct beneficial interest.
- Prohibits notarial officers from using the title "notario publico" and outlaws false and deceptive advertising.
- Requires notaries who do advertise to state they cannot practice law or act as immigration counselors.
- Requires any person seeking a notarization to appear in person before the notarial officer.
- Requires the notary to verify the identity of the person and to witness the signature or receive an acknowledgement or verification of the signature.
- Permits a notarial officer to refuse to act if satisfactory identification is not provided or if not otherwise satisfied by the interaction. The notary may not refuse to act, of course, if the refusal would be prohibited by other law.
- Requires a notary to evidence any notarial acts by certificates attached to the notarized record. Specifies the contents of the certificate and provides for form and content.
- Provides for recognition of valid notarizations from other states, from federally recognized American Indian tribes or nations, or under federal law or the law of foreign nations.
- Provides minimum standards for receiving a commission, including optional provisions for surety bonds and the examination of applicants. Also includes optional provisions for the maintenance of journals of notarial acts.
- Allows the commissioning authority to establish rules for the implementation of the act and standards for notarization of electronic records.

- Implementing the provisions of the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act, specifies the conditions for notarization of electronic records.

RULONA carries forward the traditional principles that notarial officers and the public understand and use, dedicated to preserving the integrity and reliability of notarized transactions. It recognizes and facilitates the notarization of electronic records and harmonizes their use with widely adopted state and federal laws dealing with electronic commercial transactions. It should be enacted in each state as soon as possible.

REVISED UNIFORM LAW ON NOTARIAL ACTS

- A Summary -

The original Uniform Law on Notarial Acts (ULONA) was promulgated by the Uniform Law Commission in 1982, and was designed to provide a consistent framework for notarial acts and officers among the states. To that end, the original ULONA also replaced the earlier Uniform Acknowledgement Act (1892) and the Uniform Recognition of Acknowledgements Act (1968). Since the original promulgation of ULONA, society and technology have again advanced considerably, requiring notarial officers and their practice to adapt. Growing variations in the law and practice of notarial acts have had an increasingly resonant effect on interstate commercial and lending transactions. Further, broadening use of technology and electronic records has created a need for clarification and guidance on how notarization of electronic records should be treated. In recognition of these trends, the Uniform Law Commission promulgated the **Revised Uniform Law on Notarial Acts (RULONA)** in 2010 to comprehensively revise and modernize the original ULONA.

The Revised Uniform Law on Notarial Acts (RULONA) comprehensively revises and modernizes its 1982 predecessor, the original Uniform Law on Notarial Acts. Since 1982, growing variations in the law, the increasingly national scope of banking and finance, and broadening use of technology and electronic records have created a need for clarification of the law governing notarizations and guidance on how the notarization of electronic records should be treated. Like its 1982 predecessor, RULONA provides minimum standards for all notarial acts and governs the recognition of notarizations across state and national lines.

RULONA covers and applies to all notarizations of both tangible and electronic records, and harmonizes treatment of notarization of electronic records with the Uniform Electronic Transactions Act (1999), the federally enacted Electronic Signatures in Global and National Commerce Act (2000), and the Uniform Real Property Electronic Recording Act (last amended in 2005). Specifically, RULONA does the following:

- Authorizes the performance of notarial acts by a “notarial officer,” which can be a notary public, judge, clerk or other court officer. A state may also allow an attorney or other individual to perform notarial acts. A notarial officer is prohibited from performing a notarial act in which they or their spouse is a party or has a direct beneficial interest in the underlying transaction.
- Notarial Acts may be performed by a “notarial officer,” which includes commissioned notaries public, judges, court clerks or others authorized by other state law.
- A notarial officer is prohibited from acting in any transaction in which she or he, or his or her spouse, is a party or has a direct beneficial interest.
- Requires personal appearance by a party before the notarial officer if the notarial act relates to a statement made in or a signature executed on a record. The requirement of personal appearance applies for notarization of tangible and electronic records.

- Any individual asking the notarial officer to witness or take an acknowledgment of a signature, or notarize a verification, must appear personally before the notarial officer. This requirement applies whether or not the record to be notarized is electronic.
- Requires that a notarial officer who takes an acknowledgement of a record, a verification of a statement of an oath or affirmation, or witnesses or attests to a signature, shall determine and verify the identity of the individual appearing before them from personal knowledge or satisfactory evidence as defined in section 7 of the Act, and that any signatures are the signature of the person appearing. A notarial officer who certifies or attests a copy of a record or other item must determine that the copy is a full, true, and accurate reproduction of the record or item. A notarial officer who makes or notes a protest of a negotiable interest shall do so in conjunction with required determinations under Article 3 of the Uniform Commercial Code.
- Requires the notarial officer to determine and verify the identity of the individual appearing before them and that any signature is the signature of that person.
- Requires the notarial officer who certifies or attests a copy of a record to determine that the copy is a full, true and correct copy.
- Allows a notarial officer to refuse to perform a notarial act if they are not satisfied that the person executing a record is competent, that a signature is knowingly and voluntarily made or authorized, or unless prohibited from refusing by other law.
- Provides that a notarial officer must refuse to notarize if satisfactory identification is not provided, and permits the officer to refuse to notarize if not satisfied that the person signing the record is not competent or that a signature is knowingly and voluntarily made. The notary may not refuse if prohibited from doing so by other law.
- A notarial act, with regard to either a tangible or electronic record, must be evidenced by a certificate containing the notarial officer's title, jurisdiction, and expiration of commission (if applicable), that is signed and dated contemporaneously with the notarial act. RULONA provides various acceptable formats, and provides for the form and content of the official stamp and the security of the stamping device.
- Allows a notarial officer to select one or more tamper evident technologies for the performance of notarial acts for electronic records. A notarial officer may not be required to use a technology other than one that they have selected. For notaries public, if the commissioning authority has set standards for technology, any technology that they select must conform to those guidelines.
- Provides for recognition of a notarization rendered under the authority and in the jurisdiction of another state, federally recognized American Indian tribe or nation, or federal law, if the act is performed by a proper party. RULONA also allows for recognition of foreign notarial acts or their equivalents, and U.S. consular authentications.

- Provides minimum standards for receiving a commission as a notary public. RULONA also provides optional requirements for a surety bond and for the examination of notaries public as a condition of their commissioning. The act also sets forth the grounds for the commissioning authority to deny, suspend, revoke, refuse to renew, or otherwise condition the commission of a notary public.
- Addresses deceptive, fraudulent and prohibited practices and advertising, including prohibitions on unauthorized practice of law and consultation or representation on immigration issues. Outlaws the use of the term “notario publico.”
- Provides states with the option of requiring notarial officers to keep journals chronicling notarial acts, and details requirements, medium, content, and various procedures related to security and maintenance of the journal, and submission to the state when the notarial officer ceases to perform notarial acts.
- Allows the commissioning authority to establish rules for the implementation of the act, and guidelines for the formation of rules related to electronic records.

RULONA continues to focus on the preservation of the integrity of notarial transactions to best assure the authenticity of the information they certify. The act carries forward the traditional principles that notarial officers and the public understand and use, with modernized guidance and application. RULONA includes new provisions outlawing certain deceptive practices in advertising, emphasizing that notaries have no authority to practice law, and banning specific incidents which create conflicts of interests for notaries. RULONA recognizes and facilitates notarizations for electronic records, and harmonizes their use with widely adopted state laws and federal E-SIGN. It should be adopted in every state as soon as possible.

2

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January 19, 2011

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

FR: Al Jaeger, Secretary of State

RE: HB 1136 – Uniform Notary Law

The Secretary of State's office agrees with the substantive provisions of the Uniform law that are not considered to be optional for a state to adopt and that would still maintain the pertinent aspects of the law that qualify it being uniform.

However, for the following reasons, I respectfully request the committee's consideration to adopt a hog house amendment to this bill and to appoint a sub-committee to work with my office on such an amendment.

According to the Revised Uniform Law on Notarial Acts, it lists two provisions that are optional for a state to adopt. They are the maintaining of a Journal and Examinations. While important, the Secretary of State's office will be better able to consider these options, particularly the examination and training part during the upcoming biennium. Therefore, the proposed amendment would eliminate Section 20 beginning on page 10 and Section 24 on page 15.

As written, this bill will eliminate the current self-contained chapter, 44-06, pertaining to Notary Publics and merge it into chapter 44-08, which is titled Miscellaneous Provisions. I strongly believe that a chapter devoted specifically to notarial duties must be maintained. The new chapter would probably become 44-08.1.

The arrangement of the various sections in this bill is not in a logical procedural sequence. We believe the chapter should begin, after the definitions in section 4, with the qualifications of becoming a notary public which are now in Section 23 on page 14. The official stamp is covered in Section 18, when it should be in a section much closer to the beginning of the chapter. Then, when the commissioning process is established, then the authority to perform notarial acts, the various duties, etc. should follow. A list of prohibited acts is listed in Section 27 on page 17, when they should be incorporated in or more closely related to the provisions of Section 7.

In recognition of some procedures, fees, etc. in the various states being different, the Uniform law refers to, in at least ten places, the "rules" of the Secretary of State. However, we only want a general authority to adopt rules if the need arises, especially as it pertains to electronic records and notarization. Otherwise, we would rather those specific provisions now in current law, which we wish to retain, be woven into the Uniform law rather than to having to adopt rules. As only one example, we want to retain the disciplinary proceedings in 44-06-13.2. They could be incorporated into the Section 25 of the proposed uniform law.

STATE LAW AND THE DUTIES OF A NOTARY PUBLIC
Effective as of August 1, 2009
Office of the Secretary of State
State of North Dakota

The following laws are from the North Dakota Century Code (NDCC) and pertain to the duties of a Notary Public. Although every attempt has been made for accuracy, the reprint of these laws does not carry the same authority or weight as the actual NDCC and should not be equated with the NDCC as an equal authority. This copy is only intended as a helpful resource and reference. For official and legal purposes, the official NDCC should be used.

- 44-05 Administration Of Oaths
- 44-06 Notaries Public
- 47-19-13 through 47-19-36 Record Title

NDCC CHAPTER 44-05 ADMINISTRATION OF OATHS

44-05-01. OFFICERS AUTHORIZED TO ADMINISTER OATHS. The following officers are authorized to administer oaths:

1. Each justice of the supreme court, each judge of the district court, the clerk of the supreme court, and the clerk's deputy.
2. The clerk of the district court, county auditor, recorder, and the deputy of each such officer within that officer's county.
3. Each county commissioner and public administrator within that officer's county.
4. Notary public anywhere in the state, upon complying with section 44-06-04.
5. Each city auditor, municipal judge, and township clerk, within that officer's own city or township.
6. Each sheriff and the deputy sheriff within the sheriff's county in the cases prescribed by law.
7. Other officers in the cases prescribed by law or by rule of the supreme court.

44-05-02. PERSON MAY AFFIRM. A person conscientiously opposed to swearing may affirm and is subject to the penalties of perjury as in case of swearing.

44-05-03. FEE FOR TAKING ACKNOWLEDGMENT AND ADMINISTERING AN OATH. Any officer authorized by law to take and certify acknowledgment of a deed or other instrument is entitled to charge and receive not more than five dollars.

44-05-04. PLACE OF FILING OATH OF OFFICE. Unless otherwise provided by law, any civil or public officer required by section 44-01-05 or any other provision of law to take an oath of office must file the oath as follows:

1. If a state official or member of a state board, with the secretary of state.
2. If a county official or member of a county board, with the county auditor.
3. If a city official or member of a city board, with the city auditor.
4. If a member of a district or political subdivision that is larger than a county, with the secretary of state.

N.D.C.C. CHAPTER 44-06 NOTARIES PUBLIC

44-06-01. APPOINTMENT AND QUALIFICATION OF NOTARIES PUBLIC. The secretary of state shall appoint notaries public. A notary holds office for six years unless sooner removed by the secretary of state. Each notary may administer oaths and perform all other duties required by law. Notwithstanding any other provision of law, a notary public may perform any notarial act as defined in section 47-19-14.1 outside the state as provided in section 47-19-55. A notary public must have the qualifications of an elector as to age and residence 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 must designate 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.

44-06-02. COMMISSION - RECORD - FEE - NOTICE. The secretary of state shall issue a commission to each notary public appointed by the secretary of state in the notary's legal name. Before issuing a commission, the secretary of state may require proof acceptable to the secretary of state of the notary's legal name. The notary shall post the commission in a conspicuous place in the notary's office. The secretary of state shall collect thirty-six dollars for the issuance of the commission. The secretary of state shall remit all fees collected under this section to the state treasurer for deposit in the general fund. The secretary of state shall keep a record of appointments and the date of the expiration of the appointments. The secretary of state shall notify each notary public by mail 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. 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.

44-06-03. OATH AND BOND OF NOTARY PUBLIC - APPROVAL OF BOND. Each notary public, before entering upon the duties of the office, shall take the oath prescribed for civil officers and give to the state a bond in the penal sum of seven thousand five hundred dollars conditioned for the faithful discharge of the duties of the office. Such bond may be furnished by a surety or bonding company authorized to do business in this state or by one or more sureties, and is subject to approval by the secretary of state.

44-06-03.1. NOTICE BY SURETY TO SECRETARY OF STATE OF CLAIM AGAINST BOND. If a surety or bonding company giving a bond under section 44-06-03 receives a claim against that bond with respect to a notary public, that surety or bonding company shall notify the secretary of state of the outcome of said claim.

44-06-04. FILING OF OATH, BOND, AND IMPRESSION OF NOTARIAL SEAL - REQUIREMENTS OF SEAL. Each notary public, before entering upon the duties of office, shall file the notary public's oath and bond, in the office of the secretary of state. 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 seal. A notary seal vendor may provide a notary with an official seal only upon presentation by the notary of a certificate of authorization. The notary public shall place an impression of the notary's seal 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.

After August 1, 2003, a notary being commissioned must obtain a seal 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 seals 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. An official seal 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 seal. An official seal must remain in the direct and exclusive control of the notary at all times during a notary's commission. A notary must affix the notary's seal to each jurat or certificate of acknowledgment at the time of performing the notarial act. Upon the resignation, removal, revocation, or expiration of a notary's commission, or the death or name change of a notary, the notarial seal must be destroyed. When a notary's official seal is lost, damaged, or is rendered otherwise unworkable, the notary shall immediately submit written notice of that fact to the secretary of state. Within five working days after receipt of the notice, the secretary of state shall issue a new certificate of authorization which a notary may use to obtain a replacement seal.

44-06-04.1. 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 seal. 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 seal is obtained, the notary may continue to use the old seal but must sign any notarial certificate substantially as follows:

Notary public North Dakota
Formerly known and commissioned as

My commission expires _____

Notary Seal

44-06-05. VACANCY - DISPOSITION OF RECORDS AND SEALS. 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 seal which must be destroyed as provided in section 44-06-04. 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.

44-06-06. DUTY OF NOTARY AS TO PROTESTED INSTRUMENT. Each notary public, when any bill of exchange, promissory note, or other written instrument, is by that notary public protested for nonacceptance or nonpayment, shall give notice thereof in writing to the maker, to each and every endorser of such bill of exchange, and to the maker of each security or the endorsers of any promissory note or other written instrument, immediately after such protest has been made.

44-06-07. SERVICE OF NOTICE BY NOTARY PUBLIC. Each notary public shall serve notice personally upon each person protested against, or by properly folding the notice, directing it to the person to be charged at that person's place of residence according to the best information that the person giving the notice can obtain, depositing it in the United States mail or post office most conveniently accessible, and prepaying the postage thereon.

44-06-08. RECORD OF NOTICES - CERTIFIED COPY - COMPETENT EVIDENCE. Each notary public shall keep a record of all notices, of the time and manner in which the same were served, the names of the persons to whom the same were directed, and the description and amount of the instrument protested. Such record, or a copy thereof, certified by the notary under seal, at all times is competent evidence to prove such notice in any court of this state.

44-06-09. SECRETARY OF STATE - PRESERVATION OF RECORDS. The secretary of state shall give and keep safely all the records and papers directed by this chapter to be deposited in the secretary of state's office and shall furnish certified copies thereof when required. Such copies have the same force and effect as if the same were certified by the notary public by whom the record was made.

44-06-10. REMOVAL FROM COUNTY - REQUIREMENTS. Repealed by S.L. 1955, ch. 286, § 1.

44-06-11. REVOCATION OF NOTARY COMMISSION - NOTICE. In case the commission of a person appointed as a notary is subject to a revocation action, the secretary of state shall give notice thereof by mail to that person immediately, using the procedures of 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.

44-06-12. NOTARY PUBLIC COMMISSION - VENUE - DATE OF EXPIRATION - FORM OF JURAT. Every notary public taking an acknowledgment to any instrument, immediately following the notary's signature to the jurat or certificates of acknowledgment of the type set out in chapter 47-19, shall legibly print, stamp, or type the notary's name and include the date of the expiration of the commission. Each jurat or certificate of acknowledgment must also contain the name of the state and county where the notarial act is being performed. The expiration date must be stamped or printed upon the instrument and must be substantially in the following form:

My commission expires _____

Each jurat must be substantially in the following form:

Subscribed and sworn to before me on _____

(Notary Seal)

(signature of notary)

Notary Public

My commission expires _____

44-06-13. ACTING AS NOTARY WHEN DISQUALIFIED - PENALTY. 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.

44-06-13.1. PROHIBITED ACTS - PENALTY.

1. 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 jurat, or in the case of a certificate of 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 to the transaction or as a signatory to a petition within the meaning of section 1-01-50.
 - 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 jurat or certificate of acknowledgment is not the actual date the document is to be notarized or the jurat or certificate of acknowledgement 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, jurat, or certificate of acknowledgement 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.
2. 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 1.
3. A notary public who violates this section is guilty of an infraction.

44-06-13.2. DISCIPLINARY PROCEEDINGS.

1. The secretary of state may deny, revoke, or suspend a commission granted under this chapter on the following grounds:
- a. Conviction by a court of competent jurisdiction of an offense related to the honesty, integrity, or trustworthiness of the notary which the secretary of state determines would render the notary or notary applicant unfit to serve the public as a notary.
 - b. Fraud, misrepresentation, or false statement in obtaining or renewing a commission.
 - c. Failure by a commissioned notary to report in writing to the secretary of state the notary's conviction by a court of competent jurisdiction of a felony within ninety days of the date of the conviction.
 - d. Engaging in any act prohibited under section 44-06-13.1.
 - e. Violating any other provision of this chapter.

2. The secretary of state may impose a lesser sanction for a violation of subsection 1 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.
3. 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 license on the secretary of state's own motion.
4. 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.

44-06-14. 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.

NDCC CHAPTER 47-19-13 THROUGH 47-19-36 RECORD TITLE

47-19-13. ACKNOWLEDGMENT AND PROOF - PERSONS AUTHORIZED TO MAKE – STATEWIDE JURISDICTION. The proof or acknowledgment of an instrument may be made at any place within this state before a judge, or the clerk, of the supreme court, or a notary public.

47-19-14. ACKNOWLEDGMENT AND PROOF - LIMITED TO DISTRICT OF OFFICER. The proof or acknowledgment of an instrument may be made in this state within the judicial district, county, subdivision, or city for which the officer was elected or appointed, before:

1. A judge or clerk of a court of record;
2. A mayor of a city;
3. A recorder;
4. A United States commissioner;
5. A county auditor; or
6. A township clerk or a city auditor.

47-19-14.1. RECOGNITION OF NOTARIAL ACTS. For the purposes of this section and sections 47-14.2 and 47-19-14.7, "notarial acts" mean acts which the laws and regulations of this state authorize notaries public of this state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this state:

1. A notary public authorized by any jurisdiction to perform notarial acts
2. A justice, judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed.
3. An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States department of state to perform notarial acts in the place in which the act is performed.
4. A commissioned officer or noncommissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts, if the notarial act is performed for one of the following, or that person's dependents: a merchant seaman of the United States, a member of the armed forces of the United States, or any other person serving with or accompanying the armed forces of the United States.
5. Any other person authorized to perform notarial acts in the place in which the act is performed.

47-19-14.2. AUTHENTICATION OF AUTHORITY OF OFFICER.

1. If the notarial act is performed by any of the persons described in subsections 1 through 4 of section 47-19-14.1, other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, written indication of the person's title or rank and serial number, if any, is sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of the person's authority is not required.
2. If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to perform the act if:
 - a. Either a foreign service officer of the United States, resident in the country in which the act is performed, or a diplomatic or consular officer of the foreign country, resident in the United States, certifies that a person holding that office is authorized to perform the act;
 - b. The official seal of the person performing the notarial act is affixed to the document; or
 - c. The title of the person, and an indication of the person's authority to perform notarial acts appears either in a recognized digest of foreign law, or in a list customarily used as a source of such information.
3. If the notarial act is performed by a person other than one described in subsections 1 and 2, there is sufficient proof of the authority of that person to act, if the clerk of a court of record, in the place in which the notarial act is performed, certifies to the official character of that person, and to the person's authority to perform the notarial act.
4. The signature and title of the person performing the notarial act are prima facie evidence that that person is a person with the designated title and that the signature is genuine.

47-19-14.3. CERTIFICATE OF PERSON TAKING ACKNOWLEDGMENT. The person taking an acknowledgment shall certify that:

1. The person acknowledging appeared before the person taking the acknowledgement and acknowledged that the person executed the instrument; and
2. The person acknowledging was known to the person taking the acknowledgment, or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

47-19-14.4. RECOGNITION OF CERTIFICATE OF ACKNOWLEDGMENT. The form of a certificate of acknowledgment used by a person whose authority is recognized under section 47-19-14.2 shall be accepted in this state if:

1. The certificate is in a form prescribed by the laws or regulations of this state;
2. The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or
3. The certificate contains the words "acknowledged before me" or their substantial equivalent.

47-19-14.5. CERTIFICATE OF ACKNOWLEDGMENT. The words "acknowledged before me", or their substantial equivalent, as used in a certificate of acknowledgment made by a person taking an acknowledgment outside this state shall mean:

1. That the person acknowledging appeared before the person taking the acknowledgment and acknowledged that the person executed the instrument;
2. That, in the case of:
 - a. A corporation, the officer or agent acknowledged holding the position or title set forth in the instrument and certificate; signing the instrument on behalf of the corporation by proper authority; and that the instrument was the act of the corporation;
 - b. A limited liability company, the manager or agent acknowledged holding the position or title set forth in the instrument and certificate; signing the instrument on behalf of the limited liability company by proper authority; and that the instrument was the act of the limited liability company;
 - c. A partnership, the partner or agent acknowledged signing the instrument on behalf of the partnership by proper authority and that the instrument was the act of the partnership;
 - d. A person acknowledging as attorney in fact for a principal, signing the instrument by proper authority as the act of the principal; or
 - e. A person acknowledging as a public officer, trustee, administrator, guardian, or other representative, signing the instrument by proper authority and in the capacity stated in the instrument; and
3. That the person taking the acknowledgment either knew, or had satisfactory evidence, that the person acknowledging was the person named in the instrument or certificate.

47-19-14.6. SHORT FORMS OF ACKNOWLEDGMENT. The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law or regulation of this state. The forms shall be known as the "statutory short forms of acknowledgment", and may be referred to by that name. The authorization of the forms provided in this section does not preclude the use of other forms:

1. For an individual acting in that individual's own right:

State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledging).

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

2. For a corporation:

State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent and title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

3. For a limited liability company:

State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of manager or agent and title of manager or agent) of (name of limited liability company acknowledging), a (state or place of organization) limited liability company, on behalf of the limited liability company.

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

4. For a partnership:

State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent), on behalf of (name of partnership), a partnership.

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

5. For an individual acting as attorney in fact for a principal:

State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

6. For a public officer, trustee, guardian, personal representative, or other representative:

State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

47-19-14.7. PRIOR ACKNOWLEDGMENTS NOT AFFECTED. A notarial act performed prior to the effective date of sections 47-19-14.1 through 47-19-14.8 shall not be affected by those sections. Sections 47-19-14.1 through 47-19-14.8 provide an additional method of proving notarial acts, and do not diminish or invalidate the recognition accorded to notarial acts by other laws or regulations of this state.

47-19-14.8. SHORT TITLE. Sections 47-19-14.1 through 47-19-14.8 may be cited as the Uniform Recognition of Acknowledgments Act.

47-19-15. ACKNOWLEDGMENT AND PROOF WITHOUT STATE BUT WITHIN UNITED STATES - OFFICERS QUALIFIED. Repealed by S.L. 1971, ch. 453, § 10.

47-19-16. ACKNOWLEDGMENT AND PROOF - WITHOUT THE UNITED STATES - OFFICERS QUALIFIED. Repealed by S.L. 1971, ch. 453, § 10.

47-19-17. ACKNOWLEDGMENT AND PROOF BEFORE COMMISSIONED OFFICER OF ARMED FORCES - CONDITIONS. Repealed by S.L. 1971, ch. 453, § 10.

47-19-17.1. PERSONS AUTHORIZED TO ADMINISTER OATHS AND TAKE ACKNOWLEDGMENTS. Repealed by S.L. 1971, ch. 453, § 10.

47-19-17.2. VALIDATING CERTAIN OATHS AND ACKNOWLEDGMENTS. Repealed by S.L. 1971, ch. 453, § 10.

47-19-18. DEPUTIES MAY TAKE ACKNOWLEDGMENTS. When any officer mentioned in sections 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.

47-19-19. EFFECT OF RECORDING. The record of any instrument shall be notice of the contents of instrument, as it appears of record, as to all persons.

47-19-20. IDENTITY OF PERSON ACKNOWLEDGING - PROOF REQUIRED. The acknowledgment on an instrument must not be taken unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness that the person making the acknowledgment is the individual who is described in and who executed the instrument, or if executed by a corporation or limited liability company, that the officer or manager making such acknowledgment is authorized to make it as provided in section 47-10-05.1.

47-19-21. PROOF OF AN UNACKNOWLEDGED INSTRUMENT - METHOD. Proof of the execution of an instrument when not acknowledged may be made:

1. By the party executing it;
2. By a subscribing witness; or
3. By other witnesses in cases mentioned in sections 47-19-23 and 47-19-24.

47-19-22. KNOWLEDGE REQUIRED BY OFFICER OF SUBSCRIBING WITNESS IN TAKING PROOF. If proof of the execution of an instrument is made by a subscribing witness, such witness must be known personally to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness or must be proved to be such by the oath of a credible witness. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, that such person executed it, and that the witness subscribed the witness's name thereto as a witness.

47-19-23. PROOF BY HANDWRITING - WHEN RECEIVED - REQUIREMENTS. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is evidence, in the following cases:

1. When the parties and all the subscribing witnesses are dead;
2. When the parties and all the subscribing witnesses are nonresidents of the state;
3. When the place of their residence is unknown to the party desiring the proof and cannot be ascertained by the exercise of due diligence;
4. When the subscribing witness is concealed, or cannot be found by the officer by the exercise of due diligence in attempting to serve a subpoena or attachment; or
5. In case of the continued failure or refusal of the witness to testify for the space of one hour after the witness's appearance.

47-19-24. PROOF BY HANDWRITING - FACTS REQUIRED. The evidence taken under section 47-19-23 must prove to the officer satisfactorily the following facts:

1. The existence of one or more of the conditions mentioned therein;
2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, that the witness is well acquainted with that person's signature, and that it is genuine;
3. That the witness testifying personally knew the person who subscribed the instrument as a witness, that the witness is well acquainted with the instrument witness's signature, and that it is genuine; and
4. The place of residence of the witness testifying.

47-19-25. CERTIFICATE OF PROOF - CONTENTS. An officer taking proof of the execution of an instrument must set forth in the officer's certificate, endorsed thereon or attached thereto:

1. All the matters required by law to be done or known by the officer;
2. All the matters required by law to be proved before the officer on the proceeding;
3. The names of all the witnesses examined before the officer;
4. The place of residence of all witnesses examined before the officer; and
5. The substance of the evidence given by witnesses examined before the officer.

47-19-26. CERTIFICATE OF ACKNOWLEDGMENT - FORMS. An officer taking an acknowledgment of an instrument within this state must endorse thereon or attach thereto a certificate substantially in the forms prescribed in sections 47-19-27, 47-19-28, 47-19-29, and 47-19-30.

47-19-27. GENERAL CERTIFICATE OF ACKNOWLEDGMENT. A certificate of acknowledgment, unless otherwise provided in this chapter, must be in substantially the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this _____ day of _____, in the year _____ before me personally appeared _____, known to me (or proved to me on oath of _____) to be the person who is described in and who executed the within instrument, and acknowledged to me that that person (or they) executed the same.

47-19-28. CERTIFICATE OF ACKNOWLEDGMENT EXECUTED BY A CORPORATION. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this _____ day of _____, in the year _____ before me (here insert the name and quality of the officer), personally appeared _____, known to me (or proved to me on oath of _____) to be the president (or other officer or person) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

47-19-28.1. CERTIFICATE OF ACKNOWLEDGMENT EXECUTED BY A LIMITED LIABILITY COMPANY. The certificate of acknowledgment of an instrument executed by a limited liability company must be substantially in the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this _____ day of _____, in the year _____ before me (here insert the name and quality of the manager), personally appeared _____, known to me (or proved to me on oath of _____) to be the president (or other manager or person) of the limited liability company that is described in and that executed the within instrument, and acknowledged to me that such limited liability company executed the same.

47-19-29. CERTIFICATE OF ACKNOWLEDGMENT BY AN ATTORNEY IN FACT. The certificate of acknowledgment by an attorney in fact must be substantially in the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this ____ day of _____, in the year _____ before me (here insert the name and quality of the officer), personally appeared _____, known to me (or proved to me on the oath of _____) to be the person who is described in and whose name is subscribed to the within instrument as the attorney in fact of _____ and acknowledged to me that that person subscribed the name of _____ thereto as principal and that person's own name as attorney in fact.

47-19-30. CERTIFICATE OF ACKNOWLEDGMENT BY DEPUTY SHERIFF. All acknowledgments of deeds or other instruments in writing made by any deputy sheriff of this state shall be made substantially in the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this ____ day of _____, in the year _____ before me, a _____, in and for said county, personally appeared _____, known to me to be the person who is described in and whose name is subscribed to the within instrument as deputy sheriff of said county and acknowledged to me that that person subscribed the name of _____ thereto as sheriff of said county and that person's own name as deputy sheriff.

47-19-31. CERTIFICATE OF ACKNOWLEDGMENT BEFORE COMMISSIONED OFFICER OF ARMED FORCES. Repealed by S.L. 1971, ch. 453, § 10.

47-19-32. CERTIFICATION OF ACKNOWLEDGMENTS OR PROOF OF INSTRUMENTS - OFFICER'S CERTIFICATE - HOW AUTHENTICATED. An officer taking and certifying an acknowledgment or proof of an instrument for record must authenticate the officer's certificate by affixing thereto:

1. The officer's signature followed by the name of the officer's office; and
2. The officer's seal of office, if by the laws of the territory, state, or country where the acknowledgment or proof is taken, or by authority of which the officer is acting, the officer is required to have an official seal.

A judge or clerk of a court of record must authenticate that officer's certificate by affixing thereto the seal of the judge's or clerk's court. A mayor of a city must authenticate that officer's certificate by affixing thereto the seal of the mayor's city.

47-19-33. PROHIBITION ON SELF-INTERESTED INDIVIDUALS FROM PROVING DOCUMENTS. An individual authorized by law to take or receive the proof or acknowledgment of the execution of an instrument or affidavit and to certify to the same may not take or receive the proof, acknowledgment, or affidavit or certify to the same if that individual is a party to the instrument or a member of any partnership that is a party to the instrument, or if the husband or wife of that individual is a party to the instrument. An acknowledgment taken or received in violation of this section is invalid.

47-19-34. PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS AS TO CORPORATIONS AND LIMITED LIABILITY COMPANIES. No provision in any of the laws of this state, relating to the proof and acknowledgment of instruments and the taking of affidavits, shall be construed to invalidate or affect the proof or acknowledgment, affidavit, or the certificate thereof, of any instrument to which a corporation or limited liability company may be a party and which shall have been or may be proven, acknowledged, sworn to before, or certified to by, an officer, manager, or person authorized by law, who may be an officer, director, governor, manager, employee, stockholder, or member of such corporation or limited liability company. No person otherwise qualified or authorized by law to take and receive the proof or acknowledgment of an instrument or

affidavit and to certify thereto shall be disqualified by reason of being an officer, director, employee, or stockholder of any corporation or a manager, governor, employee, or member of any limited liability company which is a party to such instrument, and such proof, acknowledgment, and certificate thereof shall be valid for all purposes.

47-19-35. PERSONS AUTHORIZED TO TAKE ACKNOWLEDGMENTS AND AFFIDAVITS. All officers and persons, authorized by law to take the proof or acknowledgment of an instrument or affidavit and to certify thereto, may take such proof or acknowledgment and certify to the same in any case not prohibited by this chapter.

47-19-36. AUTHORITY OF OFFICERS IN TAKING PROOF. Officers authorized to take the proof of instruments are authorized in such proceedings:

1. To administer oaths or affirmations;
2. To employ and swear interpreters; and
3. To issue subpoenas, obedience to which may be enforced as provided by title 28.

47-19-48. Transfer of farm may include registered name. When any owner of a farm, the name of which has been recorded as provided in section 47-19-47, the owner's heirs, executors, or administrators, transfers by deed or otherwise, the whole of such farm, such transfer may include the registered name thereof. If it is desired to transfer only a portion of such farm, the registered name thereof shall not be transferred to the purchaser unless so stated in the deed of conveyance.

47-19-49. Cancellation of registered name. Whenever any owner of a registered farm, or the owner's heirs, executors, or administrators, desires to cancel the registered name thereof, it shall be accomplished in the same manner as is provided for cancellation of real estate mortgages.

47-19-50. Filing bill of sale - Prerequisites. A bill of sale or other instrument transferring the title to personal property shall be entitled to be filed in the office of the recorder of the county where the property, or any part thereof, covered by such instrument is at the time situated when:

1. The instrument is signed by the vendor or transferor in the presence of two witnesses who must sign the same as witnesses thereto; or
2. The execution of the instrument is acknowledged before some official qualified to take acknowledgments.

47-19-51. Filing of bill of sale or other instrument - Notice. The filing of a bill of sale or other instrument which transfers the title to personal property shall operate as notice thereof to all subsequent purchasers and encumbrancers of so much of said property as is situated, at the time of such filing, in the county wherein such instrument is filed.

47-19-52. Bill of sale - Release - Cancellation by recorder. The recorder shall cancel and discharge, upon the records in the recorder's office, any bill of sale, upon the filing of a release executed by both parties to the instrument.

47-19-53. Recording petition, decree of adjudication, or order approving trustee's bond in bankruptcy proceeding. When a petition for bankruptcy, or a decree of adjudication, or an order approving the trustee's bond is made, pursuant to the Federal Bankruptcy Act of 1898, as amended by the Bankruptcy Act of 1938, Chapter 575, 52 Statutes 840, Section 21g, the bankrupt, trustee, receiver, custodian, referee, or any creditor may record a certified copy of the petition, decree, or order in the office of the recorder of any county in this state wherein is located real property of the bankrupt as shown by the schedules of the bankruptcy proceedings.

47-19-54. Sale of real property by contract for deed - Effect on joint tenants. Any contract for deed for the sale of real property held in joint tenancy shall not have the effect of dissolving the joint tenancy relationship of the vendors if such contract for deed is executed by all the joint tenants unless otherwise specifically provided in the instrument.

47-19-55. Authority of North Dakota notaries in other states. A North Dakota notary may perform a notarial act in another state if that state recognizes the notary's authority within that state.

47-19-56. Corporate change noted in assignment, satisfaction, or release. When a change in the name or identity of a corporate mortgagee or assignee of the mortgagee is caused by or results from a merger, consolidation, amendment to charter or articles of incorporation, or conversion of articles of incorporation or charter from federal to state, from state to federal, or from one form of entity to another, a mortgage assignment, satisfaction, or release that is otherwise recordable and that specifies in the body of the instrument the merger, consolidation, amendment, or conversion event causing the change in name or identity is in recordable form. The assignment, satisfaction, or release is entitled to be recorded in the office of the county recorder without further evidence of corporate merger, consolidation, amendment, or conversion. For purposes of assigning, satisfying, or releasing the mortgage, the assignment, satisfaction, or

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STATE OF NORTH DAKOTA
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January 31, 2011

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

FR: Al Jaeger, Secretary of State

RE: HB 1136 – Uniform Notary Law - Amendment

As recommended by John Walstad, the Code Revisor, the attached amendment now includes all the appropriate Century Code Chapter and Section numbering and cites.

It includes all of the Uniform Law text (with minor changes regarding cites, etc.) proposed in the original bill with the exception of Section 20 (Journal) and Section 24 (Examination), which are both optional under the Uniform Law and which are not included in the amendment.

It includes a delayed effective date to July 31, 2013, for Sections 21 (electronic notarization) and 26 (notary database) of the bill, as it was introduced.

The amendment includes all of the provisions and procedures of the current Chapter 44-06 (governing notary law) which the Secretary of State's office wants to retain and which do not conflict with the uniform law. These provisions are inserted in the applicable sections of the original bill (now numbered with the Century Code cites) and in several new sections that were created within the new proposed Chapter 44-06.1.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1136

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to adopt the Revised Uniform Law on Notarial Acts, relating to the authority to perform notarial acts; 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; to provide a penalty; and to provide an effective date.

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 17 of this Act:

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)

as (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 license 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 chapter continues until its date of expiration. A notary public who applies to renew a notary public commission after the effective date of this chapter shall comply with the provisions of this chapter. A notary public, in performing notarial acts after the effective date of this chapter, 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 chapter.

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."

Renumber accordingly

HOUSE BILL NO. 1136
TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE JUDICIARY COMMITTEE
MARCH 28, 2011

Mr. Chairman and members of the Senate Judiciary Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am also a member of the Uniform Law Commission and am here to testify in support of House Bill 1136.

House Bill 1136 adopts the Revised Uniform Law on Notarial Acts, approved by the National Uniform Law Commission in 2010. Certain relevant provisions from existing North Dakota law on notaries have also been retained. These existing provisions are not in conflict with the revised uniform act, but are needed to cover matters that the uniform act left to the states to include based on their own unique state laws.

I had the privilege of serving on the national drafting committee for the revised uniform notarial act. Al Jaeger, our Secretary of State, was an official observer and also participated.

The revised notarial act had its roots in the Uniform Acknowledgement Act first adopted in 1892. The uniform notarial act was adopted in 1968 and then updated in 1986. The 2010 revision was prompted by increasing variation among the states in their treatment of notaries public and notarial acts, by increasing nationalization of the banking and finance industries, and by the evolution and expanding adoption of electronic communications and records in commercial transactions.

The revised notarial act is designed to modernize and clarify the law governing notaries public, their responsibilities and duties, and to provide a stable infrastructure for the performance of notarial acts with respect to electronic records.

The revised notarial act harmonizes treatment of all records, whether on paper or electronic. It works together with the Uniform Electronic Transactions Act, adopted in North Dakota in 2001 as Chapter 9-16 of the North Dakota Century Code, and the federal Electronic Signatures in Global and National Commerce Act.

The revised notarial act contains provisions which:

- Require that notarizations be performed by commissioned notarial officers
- Prohibit notaries from acting in any transaction in which the notary or his or her spouse is a party or has a beneficial interest
- Requires any person seeking a notarization to appear in person before the notary
- Requires the notary to verify the identity of the person

- Permits the notary to refuse to act if the person does not provide satisfactory identification or if the notary is not otherwise satisfied by the transaction
- Provides for recognition of valid notarial acts from other states
- Provides minimum standards for receiving a notarial commission

Existing provisions from North Dakota law that are retained in the bill include;

- A section which provides what happens to the notary stamp and records in the event of a notary vacancy or resignation (44-06-05)
- Residency requirements for a notary and reciprocity provisions for notaries in counties that border North Dakota (44-06-01)
- Provisions for the surety bond required of a notary (44-06-03)
- Provisions for the term of a notary's commission, which is 6 years, and the fee charged by the Secretary of State for issuing a notarial commission, which remains unchanged at \$36 (44-06-02)
- Prohibited acts by a notary (44-06-13.1)
- Provisions relating to the procedure to be followed by a notary in the event of a name change (44-06-04.1)
- Fees that may be charged for performing a notarial act (44-06-14)

The revised notarial act will become effective on August 1, 2011. However, two provisions have delayed effective dates. Section 44-06.1-18 relating to electronic notarizations, and Section 44-06.1-22, relating to an electronic database of notaries, are both effective after July 1, 2013, in order to give time for the Secretary of State to implement these provisions.

Mr. Chairman and Members of the Committee, I urge your support for House Bill 1136.

WHY STATES SHOULD ADOPT THE REVISED UNIFORM LAW ON NOTARIAL ACTS

The Revised Uniform Law on Notarial Acts (RULONA) was approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL or ULC) at its 2010 Annual Meeting. This Act updates and modernizes the 1982 Uniform Law on Notarial Acts, which itself was an update of the Uniform Recognition of Acknowledgements Act of 1968. Indeed, the ULC first addressed the issue in 1892 with its Uniform Acknowledgement Act. The 2010 revision was prompted by increasing variation amongst the states in their treatment of notaries public and notarial acts, by increasing nationalization of the banking and finance industries which exacerbated the problem of dealing with separate requirements in each locality, and with the evolution and expanding adoption of electronic communications and records in commercial transactions. RULONA is designed to modernize and clarify the law governing notaries public, their responsibilities and duties, and to provide a stable infrastructure for the performance of notarial acts with respect to electronic records.

RULONA harmonizes treatment of notarization of all records, whether on paper or electronic. It works together with the Uniform Electronic Transactions Act (1999) and the federal Electronic Signatures in Global and National Commerce Act (2000), as well as the Uniform Real Property Electronic Recording Act (2005). RULONA contains provisions which:

- Require that notarizations be performed by notarial officers: commissioned notaries public, judges and their clerks, and others, including attorneys, as authorized by other state law.
- Prohibit notarial officers from acting in any transaction in which the officer or his or her spouse, is a party or has a direct beneficial interest.
- Prohibits notarial officers from using the title “notario publico” and outlaws false and deceptive advertising.
- Requires notaries who do advertise to state they cannot practice law or act as immigration counselors.
- Requires any person seeking a notarization to appear in person before the notarial officer.
- Requires the notary to verify the identity of the person and to witness the signature or receive an acknowledgement or verification of the signature.
- Permits a notarial officer to refuse to act if satisfactory identification is not provided or if not otherwise satisfied by the interaction. The notary may not refuse to act, of course, if the refusal would be prohibited by other law.
- Requires a notary to evidence any notarial acts by certificates attached to the notarized record. Specifies the contents of the certificate and provides for form and content.
- Provides for recognition of valid notarizations from other states, from federally recognized American Indian tribes or nations, or under federal law or the law of foreign nations.
- Provides minimum standards for receiving a commission, including optional provisions for surety bonds and the examination of applicants. Also includes optional provisions for the maintenance of journals of notarial acts.
- Allows the commissioning authority to establish rules for the implementation of the act and standards for notarization of electronic records.

- Implementing the provisions of the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act, specifies the conditions for notarization of electronic records.

RULONA carries forward the traditional principles that notarial officers and the public understand and use, dedicated to preserving the integrity and reliability of notarized transactions. It recognizes and facilitates the notarization of electronic records and harmonizes their use with widely adopted state and federal laws dealing with electronic commercial transactions. It should be enacted in each state as soon as possible.

REVISED UNIFORM LAW ON NOTARIAL ACTS

- A Summary -

The original Uniform Law on Notarial Acts (ULONA) was promulgated by the Uniform Law Commission in 1982, and was designed to provide a consistent framework for notarial acts and officers among the states. To that end, the original ULONA also replaced the earlier Uniform Acknowledgement Act (1892) and the Uniform Recognition of Acknowledgements Act (1968). Since the original promulgation of ULONA, society and technology have again advanced considerably, requiring notarial officers and their practice to adapt. Growing variations in the law and practice of notarial acts have had an increasingly resonant effect on interstate commercial and lending transactions. Further, broadening use of technology and electronic records has created a need for clarification and guidance on how notarization of electronic records should be treated. In recognition of these trends, the Uniform Law Commission promulgated the **Revised Uniform Law on Notarial Acts (RULONA)** in 2010 to comprehensively revise and modernize the original ULONA.

The Revised Uniform Law on Notarial Acts (RULONA) comprehensively revises and modernizes its 1982 predecessor, the original Uniform Law on Notarial Acts. Since 1982, growing variations in the law, the increasingly national scope of banking and finance, and broadening use of technology and electronic records have created a need for clarification of the law governing notarizations and guidance on how the notarization of electronic records should be treated. Like its 1982 predecessor, RULONA provides minimum standards for all notarial acts and governs the recognition of notarizations across state and national lines.

RULONA covers and applies to all notarizations of both tangible and electronic records, and harmonizes treatment of notarization of electronic records with the Uniform Electronic Transactions Act (1999), the federally enacted Electronic Signatures in Global and National Commerce Act (2000), and the Uniform Real Property Electronic Recording Act (last amended in 2005). Specifically, RULONA does the following:

- Authorizes the performance of notarial acts by a "notarial officer," which can be a notary public, judge, clerk or other court officer. A state may also allow an attorney or other individual to perform notarial acts. A notarial officer is prohibited from performing a notarial act in which they or their spouse is a party or has a direct beneficial interest in the underlying transaction.
- Notarial Acts may be performed by a "notarial officer," which includes commissioned notaries public, judges, court clerks or others authorized by other state law.
- A notarial officer is prohibited from acting in any transaction in which she or he, or his or her spouse, is a party or has a direct beneficial interest.
- Requires personal appearance by a party before the notarial officer if the notarial act relates to a statement made in or a signature executed on a record. The requirement of personal appearance applies for notarization of tangible and electronic records.

- Any individual asking the notarial officer to witness or take an acknowledgment of a signature, or notarize a verification, must appear personally before the notarial officer. This requirement applies whether or not the record to be notarized is electronic.
- Requires that a notarial officer who takes an acknowledgement of a record, a verification of a statement of an oath or affirmation, or witnesses or attests to a signature, shall determine and verify the identity of the individual appearing before them from personal knowledge or satisfactory evidence as defined in section 7 of the Act, and that any signatures are the signature of the person appearing. A notarial officer who certifies or attests a copy of a record or other item must determine that the copy is a full, true, and accurate reproduction of the record or item. A notarial officer who makes or notes a protest of a negotiable interest shall do so in conjunction with required determinations under Article 3 of the Uniform Commercial Code.
- Requires the notarial officer to determine and verify the identity of the individual appearing before them and that any signature is the signature of that person.
- Requires the notarial officer who certifies or attests a copy of a record to determine that the copy is a full, true and correct copy.
- Allows a notarial officer to refuse to perform a notarial act if they are not satisfied that the person executing a record is competent, that a signature is knowingly and voluntarily made or authorized, or unless prohibited from refusing by other law.
- Provides that a notarial officer must refuse to notarize if satisfactory identification is not provided, and permits the officer to refuse to notarize if not satisfied that the person signing the record is not competent or that a signature is knowingly and voluntarily made. The notary may not refuse if prohibited from doing so by other law.
- A notarial act, with regard to either a tangible or electronic record, must be evidenced by a certificate containing the notarial officer's title, jurisdiction, and expiration of commission (if applicable), that is signed and dated contemporaneously with the notarial act. RULONA provides various acceptable formats, and provides for the form and content of the official stamp and the security of the stamping device.
- Allows a notarial officer to select one or more tamper evident technologies for the performance of notarial acts for electronic records. A notarial officer may not be required to use a technology other than one that they have selected. For notaries public, if the commissioning authority has set standards for technology, any technology that they select must conform to those guidelines.
- Provides for recognition of a notarization rendered under the authority and in the jurisdiction of another state, federally recognized American Indian tribe or nation, or federal law, if the act is performed by a proper party. RULONA also allows for recognition of foreign notarial acts or their equivalents, and U.S. consular authentications.

- Provides minimum standards for receiving a commission as a notary public. RULONA also provides optional requirements for a surety bond and for the examination of notaries public as a condition of their commissioning. The act also sets forth the grounds for the commissioning authority to deny, suspend, revoke, refuse to renew, or otherwise condition the commission of a notary public.
- Addresses deceptive, fraudulent and prohibited practices and advertising, including prohibitions on unauthorized practice of law and consultation or representation on immigration issues. Outlaws the use of the term "notario publico."
- Provides states with the option of requiring notarial officers to keep journals chronicling notarial acts, and details requirements, medium, content, and various procedures related to security and maintenance of the journal, and submission to the state when the notarial officer ceases to perform notarial acts.
- Allows the commissioning authority to establish rules for the implementation of the act, and guidelines for the formation of rules related to electronic records.

RULONA continues to focus on the preservation of the integrity of notarial transactions to best assure the authenticity of the information they certify. The act carries forward the traditional principles that notarial officers and the public understand and use, with modernized guidance and application. RULONA includes new provisions outlawing certain deceptive practices in advertising, emphasizing that notaries have no authority to practice law, and banning specific incidents which create conflicts of interests for notaries. RULONA recognizes and facilitates notarizations for electronic records, and harmonizes their use with widely adopted state laws and federal E-SIGN. It should be adopted in every state as soon as possible.

ALVIN A. JAEGER
SECRETARY OF STATE

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

March 28, 2011

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

FR: Al Jaeger, Secretary of State

RE: HB 1136 – Uniform Notary Law

The bill before you is the result of a hog house amendment made to the bill after its initial introduction and hearing by the House Judiciary Committee. It was drafted by the Secretary of State's office with assistance from the Attorney General's office. Rep. Klein concurred with the amendment. He was a member of the national drafting team on the Uniform Law Commission for this particular uniform law.

As recommended by John Walstad, the Code Revisor, the amended bill now includes all the appropriate Century Code Chapter and Section numbering and cites, which were not in the original bill.

This bill includes all of the Uniform Law text (with minor changes regarding cites, etc.) proposed in the original bill with two exceptions (Journal and Examination), which were both optional choices for a state under the Uniform Law guidelines.

The bill includes (except for a few unneeded sections) all of the provisions and procedures of the current Chapter 44-06, which governs notary law and which is being repealed in this bill. The provisions and procedures in the current North Dakota law (which the Secretary of State's office wanted to retain) do not conflict with the uniform law.

Under the uniform law draft, most of the provisions in our current state law would have been adopted by administrative rule. Instead, we prefer to have them stated in the law. Therefore, they were inserted into the applicable sections of the Uniform Law (now numbered with the Century Code cites) and into the several new sections that were established within the new Chapter 44-06.1 created with this bill.

Even though the current provisions have been inserted into law, the bill still allows the Secretary of State to adopt rules, especially in the area of electronic notarization (page 20, beginning with line 23).

The bill contains two delayed effective dates. On page 11, the effective date to implement electronic notarization is July 31, 2013. The same effective date applies to the notary database on page 18.

On page 17, line 26, the word "license" appears instead of the word "commission" (see attached for context with lines 17, 18, and 22). According to John Walstad, with the committee's concurrence and without amendment, the word can be changed from license to commission before the bill is enrolled because it is a transcription error. Or, it can be changed by amendment.

In addition to Chapter 44-06, the bill repeals several sections of law that were in the suggested Uniform law and which are now included within this bill. They were identified in N.D.C.C. § 47-19-14.8, as the Uniform Recognition of Acknowledgments Act. The repealed sections are noted in the attached copy.

- 1 proceeding. A notary whose commission is revoked may be denied a new commission
2 for a period of up to six years following the date of revocation.
- 3 3. The authority of the secretary of state to deny, suspend, refuse to renew, or revoke a
4 notary public's commission does not prevent the secretary of state or an aggrieved
5 person from seeking and obtaining other remedies provided by law, whether criminal
6 or civil.
- 7 4. A notary public who exercises the duties of a notary's office with knowledge that the
8 notary's commission has expired or has been revoked or that the notary is disqualified
9 otherwise or any other person who acts as a notary or performs a notarial act without
10 a lawful notary commission is guilty of an infraction, and, if appropriate, the notary's
11 commission must be revoked by the secretary of state using the procedure under
12 chapter 28-32.
- 13 5. The secretary of state may impose a lesser sanction for a violation of any provision of
14 this chapter if determined appropriate by the secretary of state under the pertinent
15 facts and circumstances. A lesser sanction includes imposition of a civil penalty not to
16 exceed five hundred dollars or a letter of reprimand.
- 17 6. Any person may file a complaint with the secretary of state seeking denial, revocation,
18 or suspension of a commission issued or to be issued by the secretary of state. The
19 secretary of state shall provide a complaint form. The complainant shall use that form
20 and the form must be verified under oath by the complainant or duly authorized officer
21 of the complainant. If the secretary of state determines that a complaint alleges facts
22 that, if true, would require denial, revocation, or suspension of a commission, the
23 secretary of state shall initiate a hearing without undue delay. If the secretary of state
24 determines a complaint does not state facts warranting a hearing, the secretary of
25 state may dismiss the complaint. The secretary of state may initiate a hearing for
26 denial, revocation, or suspension of a license on the secretary of state's own motion.
- 27 7. Any person whose commission has been revoked or suspended may apply to the
28 secretary of state for reinstatement of the commission or termination of the
29 suspension.

STATE LAW AND THE DUTIES OF A NOTARY PUBLIC
Effective as of August 1, 2009
Office of the Secretary of State
State of North Dakota

The following laws are from the North Dakota Century Code (NDCC) and pertain to the duties of a Notary Public. Although every attempt has been made for accuracy, the reprint of these laws does not carry the same authority or weight as the actual NDCC and should not be equated with the NDCC as an equal authority. This copy is only intended as a helpful resource and reference. For official and legal purposes, the official NDCC should be used.

- 44-05 Administration Of Oaths
- 44-06 Notaries Public
- 47-19-13 through 47-19-36 Record Title

NDCC CHAPTER 44-05 ADMINISTRATION OF OATHS

44-05-01. OFFICERS AUTHORIZED TO ADMINISTER OATHS. The following officers are authorized to administer oaths:

1. Each justice of the supreme court, each judge of the district court, the clerk of the supreme court, and the clerk's deputy.
2. The clerk of the district court, county auditor, recorder, and the deputy of each such officer within that officer's county.
3. Each county commissioner and public administrator within that officer's county.
4. Notary public anywhere in the state, upon complying with section 44-06-04.
5. Each city auditor, municipal judge, and township clerk, within that officer's own city or township.
6. Each sheriff and the deputy sheriff within the sheriff's county in the cases prescribed by law.
7. Other officers in the cases prescribed by law or by rule of the supreme court.

44-05-02. PERSON MAY AFFIRM. A person conscientiously opposed to swearing may affirm and is subject to the penalties of perjury as in case of swearing.

44-05-03. FEE FOR TAKING ACKNOWLEDGMENT AND ADMINISTERING AN OATH. Any officer authorized by law to take and certify acknowledgment of a deed or other instrument is entitled to charge and receive not more than five dollars.

44-05-04. PLACE OF FILING OATH OF OFFICE. Unless otherwise provided by law, any civil or public officer required by section 44-01-05 or any other provision of law to take an oath of office must file the oath as follows:

1. If a state official or member of a state board, with the secretary of state.
2. If a county official or member of a county board, with the county auditor.
3. If a city official or member of a city board, with the city auditor.
4. If a member of a district or political subdivision that is larger than a county, with the secretary of state.

Repealed

44-06-01. APPOINTMENT AND QUALIFICATION OF NOTARIES PUBLIC. The secretary of state shall appoint notaries public. A notary holds office for six years unless sooner removed by the secretary of state. Each notary may administer oaths and perform all other duties required by law. Notwithstanding any other provision of law, a notary public may perform any notarial act as defined in section 47-19-14.1 outside the state as provided in section 47-19-55. A notary public must have the qualifications of an elector as to age and residence 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 must designate 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.

44-06-02. COMMISSION - RECORD - FEE - NOTICE. The secretary of state shall issue a commission to each notary public appointed by the secretary of state in the notary's legal name. Before issuing a commission, the secretary of state may require proof acceptable to the secretary of state of the notary's legal name. The notary shall post the commission in a conspicuous place in the notary's office. The secretary of state shall collect thirty-six dollars for the issuance of the commission. The secretary of state shall remit all fees collected under this section to the state treasurer for deposit in the general fund. The secretary of state shall keep a record of appointments and the date of the expiration of the appointments. The secretary of state shall notify each notary public by mail 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. 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.

44-06-03. OATH AND BOND OF NOTARY PUBLIC - APPROVAL OF BOND. Each notary public, before entering upon the duties of the office, shall take the oath prescribed for civil officers and give to the state a bond in the penal sum of seven thousand five hundred dollars conditioned for the faithful discharge of the duties of the office. Such bond may be furnished by a surety or bonding company authorized to do business in this state or by one or more sureties, and is subject to approval by the secretary of state.

44-06-03.1. NOTICE BY SURETY TO SECRETARY OF STATE OF CLAIM AGAINST BOND. If a surety or bonding company giving a bond under section 44-06-03 receives a claim against that bond with respect to a notary public, that surety or bonding company shall notify the secretary of state of the outcome of said claim.

44-06-04. FILING OF OATH, BOND, AND IMPRESSION OF NOTARIAL SEAL - REQUIREMENTS OF SEAL. Each notary public, before entering upon the duties of office, shall file the notary public's oath and bond, in the office of the secretary of state. 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 seal. A notary seal vendor may provide a notary with an official seal only upon presentation by the notary of a certificate of authorization. The notary public shall place an impression of the notary's seal 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. After August 1, 2003, a notary being commissioned must obtain a seal 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 seals 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. An official seal 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 seal. An official seal must

repealed

remain in the direct and exclusive control of the notary at all times during a notary's commission. A notary must affix the notary's seal to each jurat or certificate of acknowledgment at the time of performing the notarial act.

Upon the resignation, removal, revocation, or expiration of a notary's commission, or the death or name change of a notary, the notarial seal must be destroyed. When a notary's official seal is lost, damaged, or is rendered otherwise unworkable, the notary shall immediately submit written notice of that fact to the secretary of state. Within five working days after receipt of the notice, the secretary of state shall issue a new certificate of authorization which a notary may use to obtain a replacement seal.

44-06-04.1. 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 seal. 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 seal is obtained, the notary may continue to use the old seal but must sign any notarial certificate substantially as follows:

Notary public North Dakota
Formerly known and commissioned as

My commission expires

Notary Seal

44-06-05. VACANCY - DISPOSITION OF RECORDS AND SEALS. 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 seal which must be destroyed as provided in section 44-06-04. 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.

44-06-06. DUTY OF NOTARY AS TO PROTESTED INSTRUMENT. Each notary public, when any bill of exchange, promissory note, or other written instrument, is by that notary public protested for nonacceptance or nonpayment, shall give notice thereof in writing to the maker, to each and every endorser of such bill of exchange, and to the maker of each security or the endorsers of any promissory note or other written instrument, immediately after such protest has been made.

44-06-07. SERVICE OF NOTICE BY NOTARY PUBLIC. Each notary public shall serve notice personally upon each person protested against, or by properly folding the notice, directing it to the person to be charged at that person's place of residence according to the best information that the person giving the notice can obtain, depositing it in the United States mail or post office most conveniently accessible, and prepaying the postage thereon.

44-06-08. RECORD OF NOTICES - CERTIFIED COPY - COMPETENT EVIDENCE. Each notary public shall keep a record of all notices, of the time and manner in which the same were served, the names of all the persons to whom the same were directed, and the description and amount of the instrument protested. Such record, or a copy thereof, certified by the notary under seal, at all times is competent evidence to prove such notice in any court of this state.

44-06-09. SECRETARY OF STATE - PRESERVATION OF RECORDS. The secretary of state shall receive and keep safely all the records and papers directed by this chapter to be deposited in the secretary of state's office

Repealed

and shall furnish certified copies thereof when required. Such copies have the same force and effect as if the same were certified by the notary public by whom the record was made.

44-06-10. REMOVAL FROM COUNTY - REQUIREMENTS. Repealed by S.L. 1955, ch. 286, §1.

44-06-11. REVOCATION OF NOTARY COMMISSION - NOTICE. In case the commission of a person appointed as a notary is subject to a revocation action, the secretary of state shall give notice thereof by mail to that person immediately, using the procedures of 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.

44-06-12. NOTARY PUBLIC COMMISSION - VENUE - DATE OF EXPIRATION - FORM OF JURAT. Every notary public taking an acknowledgment to any instrument, immediately following the notary's signature to the jurat or certificates of acknowledgment of the type set out in chapter 47-19, shall legibly print, stamp, or type the notary's name and include the date of the expiration of the commission. Each jurat or certificate of acknowledgment must also contain the name of the state and county where the notarial act is being performed. The expiration date must be stamped or printed upon the instrument and must be substantially in the following form:

My commission expires _____.

Each jurat must be substantially in the following form:

Subscribed and sworn to before me on _____, _____.

(Notary Seal)

(signature of notary)
Notary Public
My commission expires _____

44-06-13. ACTING AS NOTARY WHEN DISQUALIFIED - PENALTY. 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.

44-06-13.1. PROHIBITED ACTS - PENALTY.

1. 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 jurat, or in the case of a certificate of 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 to the transaction or as a signatory to a petition within the meaning of section 1-01-50.
 - 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 jurat or certificate of acknowledgment is not the actual date the document is to be notarized or the jurat or certificate of acknowledgement is undated.

Repealed

- 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, jurat, or certificate of acknowledgement 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 as follows:
 - 2. A notary 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 1.
 - 3. A notary public who violates this section is guilty of an infraction.

44-06-13.2. DISCIPLINARY PROCEEDINGS.

- 1. The secretary of state may deny, revoke, or suspend a commission granted under this chapter on the following grounds:
 - a. Conviction by a court of competent jurisdiction of an offense related to the honesty, integrity, or trustworthiness of the notary which the secretary of state determines would render the notary or notary applicant unfit to serve the public as a notary.
 - b. Fraud, misrepresentation, or false statement in obtaining or renewing a commission.
 - c. Failure by a commissioned notary to report in writing to the secretary of state the notary's conviction by a court of competent jurisdiction of a felony within ninety days of the date of the conviction.
 - d. Engaging in any act prohibited under section 44-06-13.1.
 - e. Violating any other provision of this chapter.
- 2. The secretary of state may impose a lesser sanction for a violation of subsection 1 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.

3. 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 license on the secretary of state's own motion.
4. 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.

repeated

44-06-14. 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.

NDCC CHAPTER 47-19-13 THROUGH 47-19-36 RECORD TITLE

47-19-13. ACKNOWLEDGMENT AND PROOF - PERSONS AUTHORIZED TO MAKE – STATEWIDE JURISDICTION. The proof or acknowledgment of an instrument may be made at any place within this state before a judge, or the clerk, of the supreme court, or a notary public.

47-19-14. ACKNOWLEDGMENT AND PROOF - LIMITED TO DISTRICT OF OFFICER. The proof or acknowledgment of an instrument may be made in this state within the judicial district, county, subdivision, or city for which the officer was elected or appointed, before:

1. A judge or clerk of a court of record;
2. A mayor of a city;
3. A recorder;
4. A United States commissioner;
5. A county auditor; or
6. A township clerk or a city auditor.

Repeated

47-19-14.1. RECOGNITION OF NOTARIAL ACTS. For the purposes of this section and sections 47-19-14.2 and 47-19-14.7, "notarial acts" mean acts which the laws and regulations of this state authorize notaries public of this state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this state:

1. A notary public authorized by any jurisdiction to perform notarial acts.
2. A justice, judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed.
3. An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States department of state to perform notarial acts in the place in which the act is performed.
4. A commissioned officer or noncommissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts, if the notarial act is performed for one of the following, or that person's dependents: a merchant seaman of the United States, a member of the armed forces of the United States, or any other person serving with or accompanying the armed forces of the United States.
5. Any other person authorized to perform notarial acts in the place in which the act is performed.

Repealed **47-19-14.2. AUTHENTICATION OF AUTHORITY OF OFFICER.**

1. If the notarial act is performed by any of the persons described in subsections 1 through 4 of section 47-19-14.1, other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, written indication of the person's title or rank and serial number, if any, is sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of the person's authority is not required.
2. If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to perform the act if:
 - a. Either a foreign service officer of the United States, resident in the country in which the act is performed, or a diplomatic or consular officer of the foreign country, resident in the United States, certifies that a person holding that office is authorized to perform the act;
 - b. The official seal of the person performing the notarial act is affixed to the document; or
 - c. The title of the person, and an indication of the person's authority to perform notarial acts appears either in a recognized digest of foreign law, or in a list customarily used as a source of such information.
3. If the notarial act is performed by a person other than one described in subsections 1 and 2, there is sufficient proof of the authority of that person to act, if the clerk of a court of record, in the place in which the notarial act is performed, certifies to the official character of that person, and to the person's authority to perform the notarial act.
4. The signature and title of the person performing the notarial act are prima facie evidence that that person is a person with the designated title and that the signature is genuine.

Repealed **47-19-14.3. CERTIFICATE OF PERSON TAKING ACKNOWLEDGMENT.** The person taking an acknowledgment shall certify that:

1. The person acknowledging appeared before the person taking the acknowledgement and acknowledged that the person executed the instrument; and
2. The person acknowledging was known to the person taking the acknowledgment, or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

repealed

47-19-14.4. RECOGNITION OF CERTIFICATE OF ACKNOWLEDGMENT. The form of a certificate of acknowledgment used by a person whose authority is recognized under section 47-19-14.2 shall be accepted in this state if:

1. The certificate is in a form prescribed by the laws or regulations of this state;
2. The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or
3. The certificate contains the words "acknowledged before me" or their substantial equivalent.

repealed

47-19-14.5. CERTIFICATE OF ACKNOWLEDGMENT. The words "acknowledged before me", or their substantial equivalent, as used in a certificate of acknowledgment made by a person taking an acknowledgment outside this state shall mean:

1. That the person acknowledging appeared before the person taking the acknowledgment and acknowledged that the person executed the instrument;
2. That, in the case of:
 - a. A corporation, the officer or agent acknowledged holding the position or title set forth in the instrument and certificate; signing the instrument on behalf of the corporation by proper authority; and that the instrument was the act of the corporation;
 - b. A limited liability company, the manager or agent acknowledged holding the position or title set forth in the instrument and certificate; signing the instrument on behalf of the limited liability company by proper authority; and that the instrument was the act of the limited liability company;
 - c. A partnership, the partner or agent acknowledged signing the instrument on behalf of the partnership by proper authority and that the instrument was the act of the partnership;
 - d. A person acknowledging as attorney in fact for a principal, signing the instrument by proper authority as the act of the principal; or
 - e. A person acknowledging as a public officer, trustee, administrator, guardian, or other representative, signing the instrument by proper authority and in the capacity stated in the instrument; and
3. That the person taking the acknowledgment either knew, or had satisfactory evidence, that the person acknowledging was the person named in the instrument or certificate.

repealed

47-19-14.6. SHORT FORMS OF ACKNOWLEDGMENT. The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law or regulation of this state. The forms shall be known as the "statutory short forms of acknowledgment", and may be referred to by that name. The authorization of the forms provided in this section does not preclude the use of other forms:

1. For an individual acting in that individual's own right:
State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledging).

(Signature of person taking acknowledgment)

Repealed

(Title or rank)
(Serial number, if any)

- 2. For a corporation:
State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent and title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

- 3. For a limited liability company:
State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of manager or agent and title of manager or agent) of (name of limited liability company acknowledging), a (state or place of organization) limited liability company, on behalf of the limited liability company.

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

- 4. For a partnership:
State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent), on behalf of (name of partnership), a partnership.

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

- 5. For an individual acting as attorney in fact for a principal:
State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

- 6. For a public officer, trustee, guardian, personal representative, or other representative:
State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

Repealed
Repealed

47-19-14.7. PRIOR ACKNOWLEDGMENTS NOT AFFECTED. A notarial act performed prior to the effective date of sections 47-19-14.1 through 47-19-14.8 shall not be affected by those sections. Sections 47-19-14.1 through 47-19-14.8 provide an additional method of proving notarial acts, and do not diminish or invalidate the recognition accorded to notarial acts by other laws or regulations of this state.

47-19-14.8. SHORT TITLE. Sections 47-19-14.1 through 47-19-14.8 may be cited as the Uniform Recognition of Acknowledgments Act.

47-19-15. ACKNOWLEDGMENT AND PROOF WITHOUT STATE BUT WITHIN UNITED STATES - OFFICERS QUALIFIED. Repealed by S.L. 1971, ch. 453, § 10.

47-19-16. ACKNOWLEDGMENT AND PROOF - WITHOUT THE UNITED STATES - OFFICERS QUALIFIED. Repealed by S.L. 1971, ch. 453, § 10.

47-19-17. ACKNOWLEDGMENT AND PROOF BEFORE COMMISSIONED OFFICER OF ARMED FORCES - CONDITIONS. Repealed by S.L. 1971, ch. 453, § 10.

47-19-17.1. Persons AUTHORIZED TO ADMINISTER OATHS AND TAKE ACKNOWLEDGMENTS. Repealed by S.L. 1971, ch. 453, § 10.

47-19-17.2. VALIDATING CERTAIN OATHS AND ACKNOWLEDGMENTS. Repealed by S.L. 1971, ch. 453, § 10.

47-19-18. DEPUTIES MAY TAKE ACKNOWLEDGMENTS. When any officer mentioned in sections 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.

47-19-19. EFFECT OF RECORDING. The record of any instrument shall be notice of the contents of the instrument, as it appears of record, as to all persons.

47-19-20. IDENTITY OF PERSON ACKNOWLEDGING - PROOF REQUIRED. The acknowledgment of an instrument must not be taken unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness that the person making the acknowledgment is the individual who is described in and who executed the instrument, or if executed by a corporation or limited liability company, that the officer or manager making such acknowledgment is authorized to make it as provided in section 47-10-05.1.

47-19-21. PROOF OF AN UNACKNOWLEDGED INSTRUMENT - METHOD. Proof of the execution of an instrument when not acknowledged may be made:

1. By the party executing it;
2. By a subscribing witness; or
3. By other witnesses in cases mentioned in sections 47-19-23 and 47-19-24.

47-19-22. KNOWLEDGE REQUIRED BY OFFICER OF SUBSCRIBING WITNESS IN TAKING PROOF. If proof of the execution of an instrument is made by a subscribing witness, such witness must be known personally to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness or must be proved to be such by the oath of a credible witness. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, that such person executed it, and that the witness subscribed the witness's name thereto as a witness.

47-19-23. PROOF BY HANDWRITING - WHEN RECEIVED - REQUIREMENTS. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

1. When the parties and all the subscribing witnesses are dead;
2. When the parties and all the subscribing witnesses are nonresidents of the state;
3. When the place of their residence is unknown to the party desiring the proof and cannot be ascertained by the exercise of due diligence;
4. When the subscribing witness is concealed, or cannot be found by the officer by the exercise of due diligence in attempting to serve a subpoena or attachment; or
5. In case of the continued failure or refusal of the witness to testify for the space of one hour after the witness's appearance.

47-19-24. PROOF BY HANDWRITING - FACTS REQUIRED. The evidence taken under section 47-19-23 must prove to the officer satisfactorily the following facts:

1. The existence of one or more of the conditions mentioned therein;
2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, that the witness is well acquainted with that person's signature, and that it is genuine;
3. That the witness testifying personally knew the person who subscribed the instrument as a witness, that the witness is well acquainted with the instrument witness's signature, and that it is genuine; and
4. The place of residence of the witness testifying.

47-19-25. CERTIFICATE OF PROOF - CONTENTS. An officer taking proof of the execution of an instrument must set forth in the officer's certificate, endorsed thereon or attached thereto:

1. All the matters required by law to be done or known by the officer;
2. All the matters required by law to be proved before the officer on the proceeding;
3. The names of all the witnesses examined before the officer;
4. The place of residence of all witnesses examined before the officer; and
5. The substance of the evidence given by witnesses examined before the officer.

47-19-26. CERTIFICATE OF ACKNOWLEDGMENT - FORMS. An officer taking an acknowledgment of an instrument within this state must endorse thereon or attach thereto a certificate substantially in the forms prescribed in sections 47-19-27, 47-19-28, 47-19-29, and 47-19-30.

47-19-27. GENERAL CERTIFICATE OF ACKNOWLEDGMENT. A certificate of acknowledgment, unless otherwise provided in this chapter, must be in substantially the following form:

STATE OF NORTH DAKOTA)
 County of _____)

On this ____ day of _____, in the year _____ before me personally appeared _____, known to me (or proved to me on oath of _____) to be the person who is

described in and who executed the within instrument, and acknowledged to me that that person (or they) executed the same.

47-19-28. CERTIFICATE OF ACKNOWLEDGMENT EXECUTED BY A CORPORATION. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this ____ day of _____, in the year _____ before me (here insert the name and quality of the officer), personally appeared _____, known to me (or proved to me on oath of _____) to be the president (or other officer or person) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

47-19-28.1. CERTIFICATE OF ACKNOWLEDGMENT EXECUTED BY A LIMITED LIABILITY COMPANY. The certificate of acknowledgment of an instrument executed by a limited liability company must be substantially in the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this ____ day of _____, in the year _____ before me (here insert the name and quality of the manager), personally appeared _____, known to me (or proved to me on oath of _____) to be the president (or other manager or person) of the limited liability company that is described in and that executed the within instrument, and acknowledged to me that such limited liability company executed the same.

47-19-29. CERTIFICATE OF ACKNOWLEDGMENT BY AN ATTORNEY IN FACT. The certificate of acknowledgment by an attorney in fact must be substantially in the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this ____ day of _____, in the year _____ before me (here insert the name and quality of the officer), personally appeared _____, known to me (or proved to me on the oath of _____) to be the person who is described in and whose name is subscribed to the within instrument as the attorney in fact of _____ and acknowledged to me that that person subscribed the name of _____ thereto as principal and that person's own name as attorney in fact.

47-19-30. CERTIFICATE OF ACKNOWLEDGMENT BY DEPUTY SHERIFF. All acknowledgments of deeds or other instruments in writing made by any deputy sheriff of this state shall be made substantially in the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this ____ day of _____, in the year _____ before me, a _____, in and for said county, personally appeared _____, known to me to be the person who is described in and whose name is subscribed to the within instrument as deputy sheriff of said county and acknowledged to me that that person subscribed the name of _____ thereto as sheriff of said county and that person's own name as deputy sheriff.

47-19-31. CERTIFICATE OF ACKNOWLEDGMENT BEFORE COMMISSIONED OFFICER OF ARMED FORCES.
Repealed by S.L. 1971, ch. 453, § 10.

47-19-32. CERTIFICATION OF ACKNOWLEDGMENTS OR PROOF OF INSTRUMENTS - OFFICER'S CERTIFICATE - HOW AUTHENTICATED. An officer taking and certifying an acknowledgment or proof of an instrument for record must authenticate the officer's certificate by affixing thereto:

1. The officer's signature followed by the name of the officer's office; and
2. The officer's seal of office, if by the laws of the territory, state, or country where the acknowledgment or proof is taken, or by authority of which the officer is acting, the officer is required to have an official seal.

A judge or clerk of a court of record must authenticate that officer's certificate by affixing thereto the seal of the judge's or clerk's court. A mayor of a city must authenticate that officer's certificate by affixing thereto the seal of the mayor's city.

47-19-33. PROHIBITION ON SELF-INTERESTED INDIVIDUALS FROM PROVING DOCUMENTS. An individual authorized by law to take or receive the proof or acknowledgment of the execution of an instrument or affidavit and to certify to the same may not take or receive the proof, acknowledgment, or affidavit or certify to the same if that individual is a party to the instrument or a member of any partnership that is a party to the instrument, or if the husband or wife of that individual is a party to the instrument. An acknowledgment taken or received in violation of this section is invalid.

47-19-34. PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS AS TO CORPORATIONS AND LIMITED LIABILITY COMPANIES. No provision in any of the laws of this state, relating to the proof and acknowledgment of instruments and the taking of affidavits, shall be construed to invalidate or affect the proof or acknowledgment, affidavit, or the certificate thereof, of any instrument to which a corporation or limited liability company may be a party and which shall have been or may be proven, acknowledged, sworn to before, or certified to by, an officer, manager, or person authorized by law, who may be an officer, director, governor, manager, employee, stockholder, or member of such corporation or limited liability company. No person otherwise qualified or authorized by law to take and receive the proof or acknowledgment of an instrument or affidavit and to certify thereto shall be disqualified by reason of being an officer, director, employee, or stockholder of any corporation or a manager, governor, employee, or member of any limited liability company which is a party to such instrument, and such proof, acknowledgment, and certificate thereof shall be valid for all purposes.

47-19-35. PERSONS AUTHORIZED TO TAKE ACKNOWLEDGMENTS AND AFFIDAVITS. All officers and persons, authorized by law to take the proof or acknowledgment of an instrument or affidavit and to certify thereto, may take such proof or acknowledgment and certify to the same in any case not prohibited by this chapter.

47-19-36. AUTHORITY OF OFFICERS IN TAKING PROOF. Officers authorized to take the proof of instruments are authorized in such proceedings:

1. To administer oaths or affirmations;
2. To employ and swear interpreters; and
3. To issue subpoenas, obedience to which may be enforced as provided by title 28.