

Sixtieth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2196

Introduced by

Senators Hacker, Klein, J. Lee

Representatives Boe, Heller, Potter

1 A BILL for an Act to create and enact section 44-06-13.2 of the North Dakota Century Code,
2 relating to disciplinary proceedings for a notary public; and to amend and reenact sections
3 44-06-02, 44-06-12, and 44-06-13.1 of the North Dakota Century Code, relating to notary
4 commissions and to prohibited acts by a notary public.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 44-06-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **44-06-02. Commission - Record - Fee - Notice.** The secretary of state shall issue a
9 commission to each notary public appointed by the secretary of state in the notary's legal name.
10 Prior to issuing a commission, the secretary of state may require proof acceptable to the
11 secretary of state of the notary's legal name. The notary shall post the commission in a
12 conspicuous place in the notary's office. The secretary of state shall collect thirty-six dollars for
13 the issuance of the commission. The secretary of state shall remit all fees collected under this
14 section to the state treasurer for deposit in the general fund. The secretary of state shall keep a
15 record of appointments and the date of the expiration of the appointments. The secretary of
16 state shall notify each notary public by mail at least thirty days before the expiration of the
17 notary public's term of the date upon which the notary public's commission will expire. The
18 notice must be addressed to the notary public at the last-known place of residence. Each
19 notary public issued a commission shall notify the secretary of state by mail within sixty days of
20 any change of address. If a notary fails to notify the secretary of state within sixty days of a
21 change of address, the secretary of state may impose a late fee in the amount of ten dollars.
22 The notary shall pay any late fee imposed by the secretary of state before the renewal of the
23 notary's commission.

SECTION 2. AMENDMENT. Section 44-06-12 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~endorse~~ 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 ~~endorsement~~ 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 _____

SECTION 3. AMENDMENT. Section 44-06-13.1 of the North Dakota Century Code is amended and reenacted as follows:

44-06-13.1. Prohibited acts - Penalty. A notary public may not notarize a signature on a document if:

1. 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.
2. The name of the notary public or the spouse of the notary public appears on the document as a party to the transaction.
3. The signature is that of the notary public or the spouse of the notary public.
4. 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.

- 1 5. The date of the jurat or certificate of acknowledgment is not the actual date the
2 document is to be notarized or the jurat or certificate of acknowledgement is
3 undated.
- 4 6. The signature on the document or the notarial certificate is not an original
5 signature, except as otherwise provided by law.
- 6 7. The notary is falsely or fraudulently signing or notarizing a document, jurat, or
7 certificate of acknowledgement or in any other way is impersonating or assuming
8 the identity of another notary.
- 9 8. ~~Within five years of the date of issuance of a commission or renewal of a~~
10 ~~commission, the notary is convicted of a criminal offense which the secretary of~~
11 ~~state determines has a direct bearing upon the notary's ability to serve the public~~
12 ~~as a notary public~~ The signature is on a blank or incomplete document.
- 13 9. In the case of a document drafted in a language other than English, the document
14 is not accompanied by a permanently affixed and accurate written English
15 translation.

16 10. Except as otherwise provided by law:

- 17 a. The document is a copy or certified copy of any vital record authorized or
18 required by law to be registered or filed;
- 19 b. The document is a copy or certified copy of an instrument entitled by law to be
20 recorded; or
- 21 c. The document is a copy or certified copy of a public record containing an
22 official seal.

23 No notary may make or purport to make any certified copy of a vital record, a
24 recordable instrument, or a public record containing an official seal as described in
25 this subsection.

26 A notary public who violates this section is guilty of an infraction ~~and the notary public's~~
27 ~~commission may be revoked by the secretary of state or the secretary of state may impose a~~
28 ~~lesser sanction using the procedure under chapter 28-32.~~

29 **SECTION 4.** Section 44-06-13.2 of the North Dakota Century Code is created and
30 enacted as follows:

31 **44-06-13.2. Disciplinary proceedings.**

- 1 1. The secretary of state may deny, revoke, or suspend a commission granted under
2 this chapter on the following grounds:
 - 3 a. Conviction by a court of competent jurisdiction of an offense that the secretary
4 of state determines to be of such a nature as to render the notary or notary
5 applicant unfit to serve the public as a notary.
 - 6 b. Fraud, misrepresentation, or false statement in obtaining or renewing a
7 commission.
 - 8 c. Failure by a commissioned notary to report in writing to the secretary of state
9 the notary's conviction by a court of competent jurisdiction of a felony within
10 ninety days of the date of the conviction.
 - 11 d. Any just and sufficient cause that renders a notary or notary applicant unfit to
12 serve the public as a notary, including engaging in any act prohibited under
13 section 44-06-13.1.
- 14 2. A commission may be denied, revoked, or suspended for the reasons set forth in
15 subsection 1, or the secretary of state may impose a lesser sanction as determined
16 appropriate by the secretary of state under the pertinent facts and circumstances,
17 including imposition of a reasonable civil fine or a letter of reprimand.
- 18 3. Any person may file a complaint with the secretary of state seeking denial,
19 revocation, or suspension of a commission issued or to be issued by the secretary
20 of state. The complaint must be in a form prescribed by the secretary of state and
21 must be verified under oath by the complainant or duly authorized officer of the
22 complainant. If the secretary of state determines that a complaint alleges facts
23 that, if true, would require denial, revocation, or suspension of a commission, the
24 secretary of state shall institute a hearing without undue delay. If the secretary of
25 state determines a complaint does not state facts warranting a hearing, the
26 complaint may be dismissed. The secretary of state may institute a hearing for
27 denial, revocation, or suspension of a license on the secretary of state's own
28 motion.
- 29 4. Any person may be permitted to intervene and participate in secretary of state
30 hearings on denial, revocation, or suspension of commissions upon a showing of a
31 legitimate interest in such proceeding.

- 1 5. Any person whose commission has been revoked or suspended may apply to the
- 2 secretary of state for reinstatement of the commission or vacation of the
- 3 suspension.