

Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1136

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to adopt the Revised Uniform Law on Notarial Acts, relating to the authority to
2 perform notarial acts; to amend and reenact subsection 6 of section 10-19.1-84, subsection 4 of
3 section 44-05-01, and sections 44-08-06 and 47-19-18 of the North Dakota Century Code,
4 relating to notarial acts; and to repeal chapter 44-06 and sections 47-19-14.1, 47-19-14.2,
5 47-19-14.3, 47-19-14.4, 47-19-14.5, 47-19-14.6, 47-19-14.7, 47-19-14.8, and 47-19-55 of the
6 North Dakota Century Code, relating to notarial acts.

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

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

10 6. A shareholder, beneficial owner, or holder of a voting trust certificate of a publicly held
11 corporation has, upon written demand stating the purpose and acknowledged or
12 verified in the manner provided in ~~chapter 44-06~~sections 4 through 32 of this Act, a
13 right at any reasonable time to examine and copy the corporation's share register and
14 other corporate records reasonably related to the stated purpose and described with
15 reasonable particularity in the written demand upon demonstrating the stated purpose
16 to be a proper purpose. The acknowledged or verified demand must be directed to the
17 corporation at its registered office in this state or at its principal place of business.

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

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

21 **SECTION 3. AMENDMENT.** Section 44-08-06 of the North Dakota Century Code is
22 amended and reenacted as follows:

1 **44-08-06. Dimensions of seal of court or officer.**

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

9 **SECTION 4.**

10 **Definitions.**

11 In sections 4 through 32 of this Act:

- 12 1. "Acknowledgment" means a declaration by an individual before a notarial officer that
13 the individual has signed a record for the purpose stated in the record and, if the
14 record is signed in a representative capacity, that the individual signed the record with
15 proper authority and signed it as the act of the individual or person identified in the
16 record.
- 17 2. "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
18 optical, electromagnetic, or similar capabilities.
- 19 3. "Electronic signature" means an electronic symbol, sound, or process attached to or
20 logically associated with a record and executed or adopted by an individual with the
21 intent to sign the record.
- 22 4. "In a representative capacity" means acting as:
- 23 a. An authorized officer, agent, partner, trustee, or other representative for a person
24 other than an individual;
- 25 b. A public officer, personal representative, guardian, or other representative, in the
26 capacity stated in a record;
- 27 c. An agent or attorney in fact for a principal; or
- 28 d. An authorized representative of another in any other capacity.
- 29 5. "Notarial act" means an act, whether performed with respect to a tangible or electronic
30 record, that a notarial officer may perform under the law of this state. The term
31 includes taking an acknowledgment, administering an oath or affirmation, taking a

1 verification on oath or affirmation, witnessing or attesting a signature, certifying or
2 attesting a copy, and noting a protest of a negotiable instrument.

3 6. "Notarial officer" means a notary public or other individual authorized to perform a
4 notarial act.

5 7. "Notary public" means an individual commissioned to perform a notarial act by the
6 secretary of state.

7 8. "Official stamp" means a physical image affixed to or embossed on a tangible record
8 or an electronic image attached to or logically associated with an electronic record.

9 9. "Record" means information that is inscribed on a tangible medium or that is stored in
10 an electronic or other medium and is retrievable in perceivable form.

11 10. "Sign" means, with present intent to authenticate or adopt a record:

12 a. To execute or adopt a tangible symbol; or

13 b. To attach to or logically associate with the record an electronic symbol, sound, or
14 process.

15 11. "Signature" means a tangible symbol or an electronic signature that evidences the
16 signing of a record.

17 12. "Stamping device" means:

18 a. A physical device capable of affixing to or embossing on a tangible record an
19 official stamp; or

20 b. An electronic device or process capable of attaching to or logically associating
21 with an electronic record an official stamp.

22 13. "Verification on oath or affirmation" means a declaration, made by an individual on
23 oath or affirmation before a notarial officer, that a statement in a record is true.

24 **SECTION 5.**

25 **Applicability.**

26 Sections 4 through 32 of this Act apply to notarial acts performed on or after the effective
27 date of sections 4 through 32 of this Act.

28 **SECTION 6.**

29 **Authority to perform notarial acts.**

30 1. A notarial officer may perform notarial acts authorized by sections 4 through 32 of this
31 Act or by other law of this state.

- 1 2. A notarial officer may not perform a notarial act with respect to any record to which the
2 officer or the officer's spouse is a party, or in which either the officer or the officer's
3 spouse has a direct beneficial interest. A notarial act performed in violation of this
4 subsection is voidable.

5 **SECTION 7.**

6 **Requirements for certain notarial acts.**

- 7 1. A notarial officer who takes an acknowledgment of a record shall determine, from
8 personal knowledge or satisfactory evidence of the identity of the individual, that the
9 individual appearing before the officer and making the acknowledgment has the
10 identity claimed and that the signature on the record is the signature of the individual.
11 2. A notarial officer who takes a verification of a statement on oath or affirmation shall
12 determine, from personal knowledge or satisfactory evidence of the identity of the
13 individual, that the individual appearing before the officer and making the verification
14 has the identity claimed and that the signature on the statement verified is the
15 signature of the individual.
16 3. A notarial officer who witnesses or attests to a signature shall determine, from
17 personal knowledge or satisfactory evidence of the identity of the individual, that the
18 individual appearing before the officer and signing the record has the identity claimed.
19 4. A notarial officer who certifies or attests a copy of a record or an item that was copied
20 shall determine that the copy is a full, true, and accurate transcription or reproduction
21 of the record or item.
22 5. A notarial officer who makes or notes a protest of a negotiable instrument shall
23 determine the matters set forth in section 41-03-62.

24 **SECTION 8.**

25 **Personal appearance required.**

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

29 **SECTION 9.**

1 **Identification of individual.**

2 1. A notarial officer has personal knowledge of the identity of an individual appearing
3 before the officer if the individual is personally known to the officer through dealings
4 sufficient to provide reasonable certainty that the individual has the identity claimed.

5 2. A notarial officer has satisfactory evidence of the identity of an individual appearing
6 before the officer if the officer can identify the individual:

7 a. By means of:

8 (1) A passport, driver's license, or government-issued nondriver identification
9 card that is currently valid or expired not more than three years before
10 performance of the notarial act; or

11 (2) Another form of government identification issued to an individual that is
12 currently valid or expired not more than three years before performance of
13 the notarial act, contains the individual's signature or a photograph of the
14 individual, and is satisfactory to the officer; or

15 b. By a verification on oath or affirmation of a credible witness personally appearing
16 before the officer and known to the officer or whom the officer can identify on the
17 basis of a passport, driver's license, or government-issued nondriver identification
18 card that is currently valid or expired not more than three years before
19 performance of the notarial act.

20 3. A notarial officer may require an individual to provide additional information or
21 identification credentials necessary to assure the officer of the identity of the individual.

22 **SECTION 10.**

23 **Authority to refuse to perform notarial act.**

24 1. A notarial officer may refuse to perform a notarial act if the officer is not satisfied that:

25 a. The individual executing the record is competent or has the capacity to execute
26 the record; or

27 b. The individual's signature is knowingly and voluntarily made.

28 2. Except as prohibited by law other than sections 4 through 32 of this Act, a notarial
29 officer may refuse to perform a notarial act.

30 **SECTION 11.**

1 **Signature if individual unable to sign.**

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

6 **SECTION 12.**

7 **Notarial act in this state.**

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

18 **SECTION 13.**

19 **Notarial act in another state.**

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

1 **SECTION 14.**

2 **Notarial act under authority of tribe.**

- 3 1. A notarial act performed under the authority and in the jurisdiction of a federally
4 recognized American Indian tribe has the same effect as if performed by a notarial
5 officer of this state, if the act performed in the jurisdiction of that tribe is performed by:
6 a. A notary public of that tribe;
7 b. A judge, clerk, or deputy clerk of a court of that tribe; or
8 c. Any other individual authorized by the law of that tribe to perform the notarial act.
9 2. The signature and title of an individual performing a notarial act under the authority of
10 and in the jurisdiction of a federally recognized American Indian tribe are prima facie
11 evidence that the signature is genuine and that the individual holds the designated
12 title.
13 3. The signature and title of a notarial officer described in subdivision a or b of
14 subsection 1 conclusively establish the authority of the officer to perform the notarial
15 act.

16 **SECTION 15.**

17 **Notarial act under federal authority.**

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

1 **SECTION 16.**

2 **Foreign notarial act.**

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

25 **SECTION 17.**

26 **Certificate of notarial act.**

- 27 1. A notarial act must be evidenced by a certificate. The certificate must:
- 28 a. Be executed contemporaneously with the performance of the notarial act;
- 29 b. Be signed and dated by the notarial officer and, if the notarial officer is a notary
30 public, be signed in the same manner as on file with the secretary of state;
- 31 c. Identify the jurisdiction in which the notarial act is performed;

- 1 d. Contain the title of office of the notarial officer; and
- 2 e. Indicate the date of expiration, if any, of the notarial officer's commission, if the
- 3 officer is a notary public.
- 4 2. If a notarial act is performed by a notary public regarding a tangible record, the notary
- 5 public's official stamp must be affixed to or embossed on the certificate. If a notarial
- 6 act is performed by a notarial officer, other than a notary public, regarding a tangible
- 7 record and the certificate contains the information specified in subdivisions b, c, and d
- 8 of subsection 1, an official stamp may be affixed to or embossed on the certificate. If
- 9 the notarial act is performed by a notarial officer regarding an electronic record and the
- 10 certificate contains the information specified in subdivisions b, c, and d of
- 11 subsection 1, an official stamp may be attached to or logically associated with the
- 12 certificate.
- 13 3. A certificate of a notarial act is sufficient if it meets the requirements of subsections 1
- 14 and 2 and:
- 15 a. Is in a short form set forth in section 22 of this Act;
- 16 b. Is in a form otherwise permitted by the law of this state;
- 17 c. Is in a form permitted by the law applicable in the jurisdiction in which the notarial
- 18 act was performed; or
- 19 d. Sets forth the actions of the notarial officer and the actions are sufficient to meet
- 20 the requirements of the notarial act as provided in sections 7, 8, and 9 of this Act
- 21 or other law.
- 22 4. By executing a certificate of a notarial act, a notarial officer certifies that the officer has
- 23 complied with the requirements and made the determinations specified in sections 6,
- 24 7, and 8 of this Act.
- 25 5. A notarial officer may not affix the officer's signature to, or logically associate it with, a
- 26 certificate until the notarial act has been performed.
- 27 6. If a notarial act is performed regarding a tangible record, a certificate must be part of,
- 28 or securely attached to, the record. If a notarial act is performed regarding an
- 29 electronic record, the certificate must be affixed to, or logically associated with, the
- 30 electronic record. If the secretary of state has established standards pursuant to

1 section 29 of this Act for attaching, affixing, or logically associating the certificate, the
2 process must conform to the standards.

3 **SECTION 18.**

4 **Official stamp.**

5 The official stamp of a notary public must:

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

10 **SECTION 19.**

11 **Stamping device.**

- 12 1. A notary public is responsible for the security of the notary public's stamping device
13 and may not allow another individual to use the device to perform a notarial act. On
14 resignation from, or the revocation or expiration of, the notary public's commission, or
15 on the expiration of the date set forth in the stamping device, if any, the notary public
16 shall disable the stamping device by destroying, defacing, damaging, erasing, or
17 securing it against use in a manner that renders it unusable. On the death or
18 adjudication of incompetency of a notary public, the notary public's personal
19 representative or guardian or any other individual knowingly in possession of the
20 stamping device shall render it unusable by destroying, defacing, damaging, erasing,
21 or securing it against use in a manner that renders it unusable.
22 2. If a notary public's stamping device is lost or stolen, the notary public or the notary
23 public's personal representative or guardian shall notify promptly the secretary of state
24 on discovering that the device is lost or stolen.

25 **SECTION 20.**

26 **Journal.**

- 27 1. A notary public shall maintain a journal in which the notary public chronicles all notarial
28 acts that the notary public performs. The notary public shall retain the journal for ten
29 years after the performance of the last notarial act chronicled in the journal.
30 2. A journal may be created on a tangible medium or in an electronic format. A notary
31 public shall maintain only one journal at a time to chronicle all notarial acts, whether

1 those notarial acts are performed regarding tangible or electronic records. If the
2 journal is maintained on a tangible medium, it must be a permanent, bound register
3 with numbered pages. If the journal is maintained in an electronic format, it must be in
4 a permanent, tamper-evident electronic format complying with the rules of the
5 secretary of state.

6 3. Entries in a journal must be made contemporaneously with the performance of the
7 notarial act and contain the following information:

8 a. The date and time of the notarial act;

9 b. A description of the record, if any, and type of notarial act;

10 c. The full name and address of each individual for whom a notarial act is
11 performed;

12 d. If identity of the individual is based on personal knowledge, a statement to that
13 effect;

14 e. If identity of the individual is based on satisfactory evidence, a brief description of
15 the method of identification and the identification credential presented, if any,
16 including the date of issuance and expiration of any identification credential; and

17 f. The fee, if any, charged by the notarial officer.

18 4. If a notary public's journal is lost or stolen, the notary public promptly shall notify the
19 secretary of state on discovering that the journal is lost or stolen.

20 5. On resignation from, or the revocation or suspension of, a notary public's commission,
21 the notary public shall retain the notary public's journal in accordance with
22 subsection 1 and inform the secretary of state where the journal is located.

23 6. Instead of personally retaining a journal as provided in subsections 1 and 5, a current
24 or former notary public may transmit the journal to the secretary of state or a
25 repository approved by the secretary of state.

26 7. On the death or adjudication of incompetency of a current or former notary public, the
27 notary public's personal representative or guardian or any other individual knowingly in
28 possession of the journal shall transmit it to the secretary of state or the repository
29 approved by the secretary of state.

SECTION 21.

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 29 of this Act, 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.

SECTION 22.

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

Sixty-second
Legislative Assembly

1 [County] of _____

2 This record was acknowledged before me on _____ by _____

3 _____ Date _____ Name(s) of individual(s)

4 as (type of authority, such as officer or trustee) of (name of party on behalf of whom

5 record was executed.)

6 _____

7 Signature of notarial officer

8 Stamp

9 [_____]

10 Title of office

11 [My commission expires: _____]

12 3. For a verification on oath or affirmation:

13 State of _____

14 [County] of _____

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

16 _____ Date _____ Name(s) of individual(s)

17 making statement

18 _____

19 Signature of notarial officer

20 Stamp

21 [_____]

22 Title of office

23 [My commission expires: _____]

24 4. For witnessing or attesting a signature:

25 State of _____

26 [County] of _____

27 Signed [or attested] before me on _____ by _____

28 _____ Date _____ Name(s) of individual(s)

29 _____

30 Signature of notarial officer

31 Stamp

1 [_____]

2 Title of office

3 [My commission expires: _____]

4 5. For certifying a copy of a record:

5 State of _____

6 [County] of _____

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

8 of _____.

9 Dated _____

10 _____

11 Signature of notarial officer

12 Stamp

13 [_____]

14 Title of office

15 [My commission expires: _____]

16 **SECTION 23.**

17 **Notary public commission - Qualifications.**

18 1. An individual qualified under subsection 2 may apply to the secretary of state for a
19 commission as a notary public. The applicant shall comply with, and provide the
20 information required by, rules adopted by the secretary of state and submit the
21 required application fee of thirty-six dollars.

22 2. An applicant for a commission as a notary public must:

23 a. Be at least eighteen years of age;

24 b. Be a citizen or permanent legal resident of the United States;

25 c. Be a resident of or have a place of employment or practice in this state;

26 d. Be able to read and write English;

27 e. Not be disqualified to receive a commission under section 25 of this Act; and

28 f. Have passed the examination required under section 24 of this Act.

29 3. Before issuance of a commission as a notary public, an applicant for the commission
30 shall execute an oath of office and submit it to the secretary of state.

- 1 4. Before issuance of a commission as a notary public, the applicant for a commission
2 shall submit to the secretary of state an assurance in the form of a surety bond or its
3 functional equivalent in the amount of seven thousand five hundred dollars. The
4 assurance must be issued by a surety or other entity licensed or authorized to do
5 business in this state. The assurance must cover acts performed during the term of
6 the notary public's commission and must be in the form prescribed by the secretary of
7 state. If a notary public violates law with respect to notaries public in this state, the
8 surety or issuing entity is liable under the assurance. The surety or issuing entity shall
9 give thirty days' notice to the secretary of state before canceling the assurance. The
10 surety or issuing entity shall notify the secretary of state not later than thirty days after
11 making a payment to a claimant under the assurance. A notary public may perform
12 notarial acts in this state only during the period that a valid assurance is on file with the
13 secretary of state.
- 14 5. On compliance with subsections 1, 2, 3, and 4, the secretary of state shall issue a
15 notary public commission to an applicant for a term of six years.
- 16 6. A commission to act as a notary public authorizes the notary public to perform notarial
17 acts. The commission does not provide a notary public any immunities or benefits
18 conferred by law of this state on public officials or employees.

19 **SECTION 24.**

20 **Examination of notary public.**

- 21 1. An applicant for a commission who does not hold a commission as a notary public in
22 this state must pass an examination administered by the secretary of state or an entity
23 approved by the secretary of state. The examination must be based on the course of
24 study described in subsection 2.
- 25 2. The secretary of state or an entity approved by the secretary of state shall regularly
26 offer a course of study to applicants who do not hold commissions as notaries public in
27 this state. The course must cover the laws, rules, procedures, and ethics relevant to
28 notarial acts.

29 **SECTION 25.**

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 sections 4 through 32 of this Act;
 - 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 sections 4 through 33 of this Act, 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 a 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 22 of this Act.
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.
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

1 person from seeking and obtaining other remedies provided by law, whether criminal
2 or civil.

3 **SECTION 26.**

4 **Database of notaries public.**

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

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

10 **SECTION 27.**

11 **Prohibited acts.**

- 12 1. A commission as a notary public does not authorize an individual to:
13 a. Assist in drafting legal records, give legal advice, or otherwise practice law;
14 b. Act as an immigration consultant or an expert on immigration matters;
15 c. Represent an individual in a judicial or administrative proceeding relating to
16 immigration to the United States, United States citizenship, or related matters; or
17 d. Receive compensation for performing any of the activities listed in this
18 subsection.
19 2. A notary public may not engage in false or deceptive advertising.
20 3. A notary public, other than an attorney licensed to practice law in this state, may not
21 use the term "notario" or "notario publico".
22 4. A notary public, other than an attorney licensed to practice law in this state, may not
23 advertise or represent that the notary public may assist in drafting legal records, give
24 legal advice, or otherwise practice law. If a notary public, who is not an attorney
25 licensed to practice law in this state, in any manner advertises or represents that the
26 notary public offers notarial services, whether orally or in a record, including broadcast
27 media, print media, and the internet, the notary public shall include the following
28 statement, or an alternate statement authorized or required by the secretary of state,
29 in the advertisement or representation, prominently and in each language used in the
30 advertisement or representation: "I am not an attorney licensed to practice law in this
31 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.

SECTION 28.

Validity of notarial acts.

Except as otherwise provided in sections 4 through 32 of this Act, the failure of a notarial officer to perform the duties or meet the requirements specified in sections 4 through 32 of this Act does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under sections 4 through 32 of this Act 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.

SECTION 29.

Rules.

1. The secretary of state may adopt rules to implement sections 4 through 32 of this Act. 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:
- a. Prescribe the manner of performing notarial acts regarding tangible and electronic records;
 - b. Include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;
 - c. Include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures;

- d. Prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public;
 - e. Include provisions to prevent fraud or mistake in the performance of notarial acts;
 - f. Establish the process for approving and accepting surety bonds and other forms of assurance under section 23 of this Act; and
 - g. Provide for the administration of:
 - (1) The examination of individuals applying for a commission as a notary public; and
 - (2) The course of study to be offered to new applicants for a commission as a notary public.
2. In adopting, amending, or repealing rules about notarial acts with respect to electronic records, the secretary of state shall consider, so far as is consistent with this Act:
- a. The most recent standards promulgated by national bodies, such as the national association of secretaries of state;
 - b. Standards, practices, and customs of other jurisdictions that substantially enact this Act; and
 - c. The views of interested individuals and governmental officials.

SECTION 30.

Notary public commission in effect.

A commission as a notary public in effect on the effective date of sections 4 through 32 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 sections 4 through 32 of this Act shall comply with sections 4 through 32 of this Act. A notary public, in performing notarial acts after the effective date of sections 4 through 32 of this Act, shall comply with sections 4 through 32 of this Act and is subject to refusal to renew the notary public's commission or revocation or suspension of the notary public's commission under sections 4 through 32 of this Act.

SECTION 31.

Savings clause.

Sections 4 through 32 of this Act do not affect the validity or effect of a notarial act performed before the effective date of sections 4 through 32 of this Act.

1 **SECTION 32.**

2 **Relation to Electronic Signatures in Global and National Commerce Act.**

3 Sections 4 through 32 of this Act modify, limit, and supersede the federal Electronic
4 Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but do not modify,
5 limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize electronic delivery
6 of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

7 **SECTION 33. AMENDMENT.** Section 47-19-18 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **47-19-18. Deputies may take acknowledgments.**

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

13 **SECTION 34. REPEAL.** Chapter 44-06 and sections 47-19-14.1, 47-19-14.2, 47-19-14.3,
14 47-19-14.4, 47-19-14.5, 47-19-14.6, 47-19-14.7, 47-19-14.8, and 47-19-55 of the North Dakota
15 Century Code are repealed.