Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1316

Introduced by

Representatives Klemin, K. Koppelman, Maragos

Senators Grabinger, Hogue

A BILL for an Act to amend and reenact subsection 5 of section 44-06.1-01, section 44-06.1-17, subsections 5 and 9 of section 44-06.1-20, subsection 2 of section 44-06.1-21, subsections 6, 7, and 8 of section 44-06.1-23, and section 44-06.1-27 of the North Dakota Century Code, relating to notarial acts, notary commissions, and notary public name and address changes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 44-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

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~~7 of section 44-06.1-23, and noting a protest of a negotiable instrument.

SECTION 2. AMENDMENT. Section 44-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

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.~~

SECTION 3. AMENDMENT. Subsections 5 and 9 of section 44-06.1-20 of the North Dakota Century Code are amended and reenacted as follows:

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~~four 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.
9. Each notary public issued a commission shall notify the secretary of state ~~by mail~~in writing 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.~~

SECTION 4. AMENDMENT. Subsection 2 of section 44-06.1-21 of the North Dakota Century Code is amended and reenacted as follows:

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~~four years following the date of revocation.

SECTION 5. AMENDMENT. Subsections 6, 7, and 8 of section 44-06.1-23 of the North Dakota Century Code are amended and reenacted as follows:

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.~~if:

a. The document is a copy or certified copy of any vital record authorized or required by law to be registered or filed;

b. The document is a copy or certified copy of an instrument entitled by law to be recorded; or

c. The document is a copy or certified copy of a public record containing an official seal.

8. A notary public ~~must~~shall affix the notary's ~~seal to each verification on oath or affirmation or acknowledgment~~official stamp at the time of performing ~~the~~each notarial act.

SECTION 6. AMENDMENT. Section 44-06.1-27 of the North Dakota Century Code is amended and reenacted as follows:

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~~commission with the notary's new name is received, 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

Upon receipt of the rider and fee, the secretary of state shall issue a certificate of authorization that the notary public must use to obtain a new stamping device. The notary 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 authorization is on file, the secretary of state shall issue a commission with the notary's new name.