

SENATE INDUSTRY & BUSINESS
SENATOR JEFF BARTA, CHAIRMAN

TESTIMONY PRESENTED BY

SANDY McMERTY, DEPUTY SECRETARY OF STATE

Chairman Barta and members of the committee, I am Sandy McMerty, and I serve as deputy for Secretary of State Michael Howe. I am here today to ask for your support of SB2144. This bill provides technical clean-up language and improvements for sections of code impacting our office's functions in the areas of business, licensing, and notaries public. It seeks to create efficiencies and modernize interactions with customers and provide additional protections to the agency related to the data we collect.

OVERVIEW OF BILL SECTIONS

SECTION 1, SECTION 2, and SECTION 8: These sections remove references to the collection of taxpayer identification numbers, such as FEINs or social security numbers. The agency DOES NOT use any taxpayer identification numbers in its processes, and the collection and storage of this data creates a significant risk to the agency. Based on conversation with the NDIT Government Risk Team Lead, the cost of remediation for a security breach involving SSNs or FEINs not used in the work of our agency is estimated at \$242 per record. With over 200,000 records in the business/contractor areas of our system, this would reach into the multi-millions of dollars of impact to the state. Quite simply, collecting data we do not use is simply bad practice and creates significant risk to the agency and state of North Dakota.

Section 1 and Section 2 remove references for collection of this data in the Professional Employer Organizations Chapter – NDCC 43-55-03 and 43-55-09. Section 8 repeals two separate code references for the collection of this data in the Fictitious Partnership Name Chapter – NDCC 45-11-10 and the Trade Names Chapter – NDCC 47-25-08.

SECTION 3: This section is modernization of language in the Notary Chapter – NDCC 44-06.1-20. The language changes proposed will allow for notification of the expiration of a notary's commission to be sent electronically (for example, by email), in addition to mail.

SECTION 4: This section also applies to notaries public and is intended to allow notaries to pass on any fee they may incur in using communication technology to perform a remote notarization. Attached at the end of my

testimony you will find an amendment we are requesting to this section of the bill. The amendment as presented is supported by the National Notary Association and was created in collaboration with stakeholders to ensure it doesn't create unnecessary restrictions in the proposed language.

SECTION 5: This section seeks to provide modernization of language to allow for notification of renewal for expiring trade names to be sent electronically (for example the use of email) in addition to mail, within the Trade Name Chapter – NDCC 45-25-04.

SECTION 6: This section provides updates to the Trade Name Chapter – NDCC 45-25-07. It has minor language changes in the first four subsections to create consistency with other business statutes.

We are requesting the addition of a new subsection 5 which seeks to address instances of misrepresentation of information and our ability to protect a record's integrity by correcting those misrepresentations (for example where an individual may try to use another's identity to create a trade name). This may occur when a bad actor attempts to register a business trade name under the address of a private individual or to appear as an affiliate of a parent organization while having no connection with that organization. If contacted by an individual who has been misrepresented, or if we determine there might be an attempted misrepresentation, we don't have any authority to cancel a trade name under existing language. This section seeks to create a 30-day notification window upon notification or discovery of a misrepresentation, similar to what we have in other sections of code, where we can seek greater information from the filing party and the party that may have been misrepresented. It would also allow for a cancellation of a trade name by our office under if the misrepresentation is not corrected by the entity in which such misrepresentation was present and align 47-25 with other business statutes that have similar language.

SECTION 7: The changes proposed in this section would help create efficiencies for our customers and remove an unused fee within the Secretary of State Chapter – NDCC 54-09-04. Removal of subsection 1 relates to copy requests for filings with the secretary of state for which we can charge .50 cents per page. Businesses and others may request copies of records on file with our office. A request for copies puts a pause of what could be hours or days in what could be a streamlined, one-step process. Currently, if we receive a copy request, staff must search records and calculate the number of pages in the request to provide an estimate (# of pages X .50 cents). The staff then presents a quote to the requester, and if they wish to proceed, they can then pay and receive the digital documents. If the copy fee was removed, this process could be streamlined with the requester being able to make payment for a copy request without staff needing to manually calculate the fee. This would also create the

possibility for our office to update our online system so that copy requests may be submitted and paid for online through the FirstStop portal. Total revenue generated by copy requests in the 2021-2023 biennium were \$10,472 special, \$276 general funds. This cost is outweighed by the cost of staff time to conduct the counting of pages to provide copy request estimates. We are requesting removal of this in statute to create efficiencies for our customers. The agency would still be able to charge .25 cents for any open records request. This change removes unneeded delays and staff time in processing requests for businesses online.

The striking of subsection 3 is removal of a fee for filing a certificate for appointment of an attorney. Our team could find no record of anyone requesting this filing since our online records started in 2019, and our longtime staff have no memory of ever receiving such a filing. This removal just seeks to clean-up outdated language.

That brings my summary of the bill to a close and I urge your support for SB2144.

PROPOSED AMENDMENT TO SENATE BILL NO. 2144

Page 3, after line 15, replace the remainder of Section 4 with:

3. A notary public may charge a technology fee when performing a notarial act for a remotely located individual under section 44-06.1-13.1 and with respect to an electronic record under section 44-06.1-18 if:
 - a. The notary has incurred fees for utilizing technology to perform the notarial act.
 - b. The notary and the person requesting the notarial act agree upon the technology fee in advance.
 - c. The notary explains to the person requesting the notarial act the technology fee is separate from the notarial act fee.