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DESCRIPTION

11/68

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Deanna Hall
Operator's Signature

10/2/03
Date

2003 HOUSE JUDICIARY

HB 1168

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Dennna Holladay
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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1168

House Judiciary Committee

☐ Conference Committee

Hearing Date 1-27-03

Tape Number	Side A	Side B	Meter #
	XX		0-21
Committee Clerk Signature <i>Al Moore</i>			

Minutes: 12 members present, 1 member absent (Rep. Maragos)

Chairman DeKrey: We will open the hearing on HB 1168.

Al Jaeger, Secretary of State: (see attached testimony)

Rep. Delmore: What is the charge to become a notary?

Mr. Jaeger: It's \$25 to become a notary, with that they need to secure a bond through an insurance agency, purchase a notary seal, and the commission is good for 6 years.

Rep. Wrangham: On Section 3, dealing with dating, what if a person left off the date by accident, he could lose his license for forgetting to put down the date? Isn't that a change.

Mr. Jaeger: It really isn't. You have to keep in mind that we do not automatically revoke an individual's commission. We can assess penalties from a hand slap all the way up to revocation.

Rep. Wrangham: I guess I get a little nervous when we're putting these things into law, knowing that you would be fair judge of how bad the infraction was, but we don't know what the next Secretary of State is going to be like.

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Dorinda Hall
Operator's Signature

1/21/03
Date

Page 2
House Judiciary Committee
Bill/Resolution Number HB 1168
Hearing Date 1-27-03

Mr. Jaeger: You have to realize that the notary public is a lot of times considered kind of lax, and they don't really realize the importance of their job. What we have put in here, is nothing more than they should already be doing in their responsibilities as notary. We're trying to cover just the basics. If the notary does not complete their function correctly, it brings into question the entire process of their function.

Rep. Klemin: In the differences between section 1 and section 2; section 2 has the provision, my commission expires _____, and then section 1 says that you have to have the name and commission date on your stamp. Is this a separate requirement?

Mr. Jaeger: It is not a separate requirement, and perhaps the part in section 2 could have been deleted. We want to make sure that the notary stamp has their expiration on the stamp. We want the expiration date on the stamp, that way it is not forgotten when someone notarizes something.

Rep. Klemin: Section 1 doesn't talk about re-commission.

Mr. Jaeger: We treat each commission as a new one.

Rep. Klemin: If a person had an embosser, the next time they get their commission from you, they can't use it anymore.

Mr. Jaeger: That is really the intent. The embosser cannot leave an impression that can be copied or faxed.

Rep. Delmore: How do you become a notary?

Mr. Jaeger: We have a really nice website, where you can download all the forms, fill out the forms, \$25 fee, proof of bond from the insurance company, buy a stamp, and send copy to Secretary of State.

Rep. Delmore: How many notaries are in the state.

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10/2/03
Date

Page 3
House Judiciary Committee
Bill/Resolution Number HB 1168
Hearing Date 1-27-03

Mr. Jaeger: We currently, as of November, have 11,600 notaries.

Rep. Delmore: In Section 4 you set up reasonable fees for travel, what will the reasonable fees be, or would that just be between the notary and whoever wants it done.

Mr. Jaeger: We want the fees to be determined between the notary and the person. We will not regulate what they charge.

Rep. Kretschmar: You envision the stamp to be a rubber stamp.

Mr. Jaeger: Yes.

Rep. Kretschmar: In Section 1, line 20, is the commission date - is that supposed to be the expiration date of the commission?

Mr. Jaeger: Probably should read as the commission expiration date.

Rep. Galvin: If the stamp becomes the property of the notary, do you have to turn it in, if not a notary anymore?

Mr. Jaeger: You can turn it in or destroy it, the notary has the responsibility of disposing of it.

Rep. Delmore: As I look at the violations, you've got several on your newsletter, where the document was not signed in the presence of the notary. How do you find out about those things.

Mr. Jaeger: Eight out of 10 come to our office on notary forms submitted to us. The other two might be reported by someone else, by bringing it to our attention

Rep. Klemin: I just have a comment on this issue, I've represented parties in two separate lawsuits in the past where one of the defendants who joined the action has been the notary, who notarized documents not signed in the presence of the notary. In both cases, they turned out to be forgeries.

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House Judiciary Committee
Bill/Resolution Number HB 1168
Hearing Date 1-27-03

Chairman DeKrey: Thank you. Anyone wishing to testify in favor? Any wishing to testify in opposition. We will close the hearing.

(Re-opened later in the same session. Rep. Maragos now present)

Chairman DeKrey: Let's take a look at HB1168.

Rep. Kretschmar: Made a motion to amend the bill, to insert the word "expiration" after the word commission on line 20, page 1.

Rep. Delmore: Seconded.

Voice vote: All in favor.

Rep. Grande: Motion for Do Pass as amended.

Rep. Delmore: Seconded.

Chairman DeKrey: Any further discussion?

Rep. Maragos: Were any parts of this bill the result of the lottery initiative.

Rep. Kretschmar: He didn't say anything about the initiative of the lottery.

Rep. Wrangham: I have no problem with not using the embosser, I have a problem with the increased penalty - for putting on the wrong date or forgetting the date by accident. If it is done on purpose, they should lose their commission.

12 YES 0 NO 1 ABSENT DO PASS W/AMENDMENTS CARRIER: Rep. Klemin

38248.0101
Title.0200

Adopted by the Judiciary Committee
January 27, 2003

VR
1/27/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1168 JUD 1-28-03

Page 1, line 20, after "commission" insert "expiration"

Renumber accordingly

Page No. 1

38248.0101

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Deanna Hallmark
Operator's Signature

10/2/03
Date

Date: 1/27/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1168

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38248.0101 .0200

Action Taken Do Pass w/ Amend.

Motion Made By Rep. Grande Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eokre	✓	
Rep. Bernstein	✓		Rep. Onstad	AB	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Klemin

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

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Deanna Goldsmith 1/27/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
January 28, 2003 2:35 p.m.

Module No: HR-16-1219
Carrier: Klemin
Insert LC: 38248.0101 Title: .0200

REPORT OF STANDING COMMITTEE
HB 1168: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS
FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 0 NAYS,
1 ABSENT AND NOT VOTING). HB 1168 was placed on the Sixth order on the
calendar.

Page 1, line 20, after "commission" insert "expiration"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

HR-16-1219

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Deanna Holbrook
Operator's Signature

10/2/03
Date

2003 SENATE JUDICIARY

HB 1168

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Deanna G. Ballantyne
Operator's Signature

10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1168

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/17/03

Tape Number	Side A	Side B	Meter #
1	X		5.3 - 27.5
Committee Clerk Signature <i>Maria L. Salvey</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

Testimony in Support of HB 1168

Al Jaeger - Secretary of State, Introduced Bill (meter 5.3) Read Testimony - Attachment #1. We are running into problems because the seal can not be reproduced on copies. The "notary" is an "employee" of the state.

Sen. Traynor questioned why we need a law for travel expenses when there is already an opinion on it. Mr. Jaeger stated that people do not look at opinions they only look at laws. Discussed Biannual Mailing to all notaries. Discussion on violations (meter 12) Discussion of act "putting the seal on" not the travel/expense portion.

Sen. Trenbeath discussed the inking over the embossing process - would this sill be allowed under this? A lot of people do not rub the carbon when making copies and the seal is invisible.

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Dannan Baller
Operator's Signature

10/2/03
Date

Page 2
Senate Judiciary Committee
Bill/Resolution Number HB 1168
Hearing Date 03/17/03

The seal must have the commission expiration date-we are mandating this. Your stamp does not have an expiration date. Sen. Trenbeath stated that if he embossed then carbon over it, and stamped expiration date on it would it be rejected? No not according to this, you would fulfill everything required.

Sen. Dever questioned is a fax copy as valuable as the original? No it is only readable.

Discussion of the process of becoming a notary. Discussion of the new stamp-you would purchase this after your notary expired.

Mary Fleet - Notary office Discussed the problems other states were having with "mobile" notaries. (motion 25). Notary charges.

Testimony in Opposition of HB 1168

None

Testimony Neutral to HB 1168

None

Motion Made to DO PASS HB 1168 Senator Thomas L. Trenbeath and seconded by Senator Carolyn Nelson.

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Floor Assignment: Senator Stanley W. Lyson, Vice Chairman

Senator John T. Traynor, Chairman closed the hearing

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Donna Ballin
Operator's Signature

10/2/03
Date

Date: March 17, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1168

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Sen. Trenbeath Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment Sen. Lyson

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

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Dennis Bercier
Operator's Signature

10/2/03
Date

REPORT OF STANDING COMMITTEE (410)
March 17, 2003 5:39 p.m.

Module No: SR-46-4973
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1168, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends DO
PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1168 was
placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-46-4973

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Deanna G. Ballantyne
Operator's Signature

10/2/03
Date

2003 TESTIMONY

HB 1168

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Operator's Signature

10/2/03
Date

ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.state.nd.us/sec



PHONE (701) 328-2900
FAX (701) 328-2992
E-MAIL sos@state.nd.us

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

January 27, 2003

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

FR: Al Jaeger, Secretary of State

RE: HB 1168 -- Notary Public

By law, a notary public is considered an Officer of the State and takes an Oath of Office before they are commissioned. This bill is to clarify procedures and responsibilities related to the duties of a notary. It would also allow a notary to recover his or her expenses if travel is involved.

Section 1:

1. All notaries commissioned after the effective date of the bill will be required to purchase a notary seal, which is photographically reproducible.
2. Establishes in law that a notary's seal is the property of the notary, even if an employer paid for it, and that it must always remain under the direct and exclusive control of the notary.
3. Provides that a notary must affix his or her notary seal each time they perform a notarial act.

Section 2:

1. Provides that each time a notary performs a notarial act, he or she must also list the venue, i.e., state and county, where the notarial act was performed.

Section 3:

1. Provides that it is a violation if the notary does not date his or her notarial act.
2. Adds a provision related to a notary falsely or fraudulently performing a notarial act or impersonating or assuming the identity of another notary.

Section 4:

1. Allows a notary to charge mileage, in addition to the notary fee, if agreed upon in advance.
2. Provides that a notary fee is separate from travel expenses, which expenses are neither mandated nor specified in the law.

Section 5:

1. Adds a reference to N.D.C.C. § 44-06-04 (section 1 of the bill) related to the type of seal.

For your review, I have also enclosed with this testimony a copy of *Notary Notes*, which was mailed to every notary in November 2002.

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10/2/03
Date



NOTARY NOTES

Newsletter of Licensing Division
North Dakota Secretary of State's Office
Alvin A. Jaeger, Secretary Of State

November 2002

Vol 3 No. 6

Greetings!

Today, there are almost 11,600 commissioned Notary Publics in the State of North Dakota. Each one of them, when applying for his or her commission executed the following Oath of Office.

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of North Dakota and that I will faithfully discharge the duties of the office of Notary Public according to the best of my ability, so help me God."

Obviously, this is not an Oath to be taken lightly and quite appropriate for the position of trust and responsibility that one undertakes when becoming a Notary. Therefore, I encourage Notaries to always remain knowledgeable about the law and that they use common sense and follow his or her conscience in doing what is right and honest. A Notary is an Officer of the State and must perform the duties of the office with the highest level of integrity. The public depends on you.

I wish you well as you perform your duties.

Al Jaeger
Secretary of State



Everything Is On The Web

Everything you ever wanted to know about being a Notary Public is available on the Secretary of State's website at www.state.nd.gov/sec such as:

- What Is A Notary Public?
- How To Become A Notary Public
- Notary Address Change Form
- Notary Name Change Form
- Notary Responsibilities
- Notary Seal/Stamp Specifications
- Notary Terminology
- Notary Notes - current and past issues

Do You Have an E-Mail Address or Access to the Internet?

One of the future goals of the Secretary of State's office is to distribute notary tips via e-mail. If you are interested in receiving these tips and have not previously provided your e-mail address, please send it to sec@state.nd.us. Your e-mail address will then be added to the distribution list. The tips will also be posted to the Secretary of State's website at www.state.nd.us/sec.

Common Sense and Conscience Avoids Compromising Notary Impartiality

(Parts of the following commentary have been adapted from an article written by David S. Thun of the National Notary Association.)

"Beneficial Interest," it is one of the hardest terms for a Notary Public to clearly define. The basic rule is simple, a Notary should not notarize a signature if he or she benefits from the document or has a connection that compromises impartiality. But what are these connections? Is it acceptable to notarize for a spouse, parent, a friend, or an employer?

North Dakota law is clear in stating that a Notary cannot notarize his or her spouse's signature. The law also states that the Notary cannot notarize a document if the name of the Notary or the name of his or her spouse appears on the document as a party to the transaction. Although North Dakota law presently does not have prohibitions beyond that, a Notary should still use common sense and conscience to avoid the appearance of having a "Beneficial Interest" when performing notarial duties.

Here are basic guidelines for judging impartiality in any act of notarization.

1. A Notary should not notarize a signature on a document in which they are named or in which they will receive a benefit from. Aside from being against the law, this is clearly a conflict of interest. It is hardly possible to be objective when notarizing a signature on a will that leaves thousands of dollars to the Notary, or on a document granting a Notary power to sign checks on behalf of another individual. In both cases, another Notary should be used. Even if the Notary does not benefit directly, it would be improper.

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Date

NOTARY NOTES - 2

2. A Notary should not notarize a document for close family members. Notarizing documents for parents, siblings, spouses, and other relatives opens an ethical can of worms for the Notary. In many cases, a close family relationship with a signer automatically brings beneficial interest. Although North Dakota only prohibits notarizing if the Notary is named in the document, it is best to refer close family members to another Notary in order to avoid even the slightest appearance of bias.
3. If a Notary is a company officer, it may be a conflict of interest to notarize company documents. Because the Notary may have a financial stake in the document, it may be better to have a lower-level salaried employee, perhaps a clerk or administrative assistant, notarize the document instead.
4. Performing a notarial act when the Notary is also a paid agent for a signer may be a conflict of interest. Often times, attorneys, real estate agents, and other professionals are Notaries who, at the same time, are paid by clients for their services. While it may be convenient for these Notaries to notarize a client's signature, the Notary should consider whether it is ethically appropriate. When judging whether notarizing for a client would compromise honesty and impartiality, it is far better to take the document to another Notary instead. This demonstrates that the Notary's ethical standards go above and beyond what the law requires, which is certainly a helpful character trait for all Notaries. It also helps ensure that the Notary has exercised every reasonable care to ensure that the document is properly notarized.
6. Which is better, a seal embosser or a notary stamp? Often times, copies of documents are photocopied, transmitted via fax, or scanned for electronic transmission. An embossed impression of a Notary's seal will not be visible with these forms of copying. Although both types are legal, Notaries are encouraged to consider purchasing a notary stamp that leaves an inked impression, which will be visible when copies are made.
7. Is there an advantage to a Notary in having his or her expiration date on their notary stamp? State law requires a Notary Public to include the expiration date of the Notary's commission each time he or she performs a notarial function. Having the Notary's commission expiration date on the notary stamp, as listed on his or her Certificate of Commission, will fulfill this requirement and ensure that the correct expiration date is used each time.
8. May a Notary affix his or her seal/stamp over the top of written or printed information on a document? This practice is discouraged since the seal/stamp may cover information pertinent to the document.
9. Who decides the expiration date of a Notary's commission? The expiration date is chosen by the Secretary of State's office and appears on the Notary's Certificate of Commission. The Notary, when performing notarial functions, must use the date as listed on the official certificate issued by the state. A Notary should not rely on any dates appearing on a Notary's surety bond as the basis for his or her commission's expiration date.
10. When a Notary receives his or her Certificate of Commission, what should they do with it? State law requires a Notary to post his or her certificate in a conspicuous place.
11. Is a Notary only authorized to perform notarial duties in the county of his or her residence? No. A Notary, commissioned by the State of North Dakota, may perform notarial duties throughout the state. Therefore, the Notary's county of residence should not appear on the notary stamp.
12. How soon before a Notary's commission expiration date, can a renewal application be submitted? Renewal applications are accepted up to two months prior to the expiration date of the Notary's commission. A Notary must never continue to perform notarial functions after the expiration date of his or her commission unless they have received a new Certificate of Commission from the Secretary of State's office.
13. How does one report a suspected illegal, improper, or questionable act committed by a Notary? A suspected violation may be reported to the Secretary of State or to a County State's Attorney.

Answers To Often Asked Questions



1. When notarizing, may a Notary use a rubber stamp facsimile for his or her signature? No. A Notary's signature must be original and signed exactly as listed on his or her commission.
2. May a Notary notarize a facsimile, pre-printed, or stamped signature? No. Except as otherwise may be provided in law, a Notary may not notarize a signature that is not an original signature and signed in his or her presence.
3. When does a Notary's commission officially expire? The commission expires on midnight on the date listed on the Notary's Certificate of Commission.
4. Is the Notary responsible for verifying the truth or accuracy of the document? No. The main purpose of notarization is to verify that the individual affixing his or her signature is the person they say they are and that he or she is not under any duress to sign the document.
5. Is a Notary authorized to give legal advice or prepare legal documents? Unless the Notary is an attorney, they are not allowed to provide legal counsel or prepare legal documents.

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NOTARY NOTES - 3

Notary Violations From July 1, 2001 Through June 30, 2002



(Note: The circumstances surrounding each violation are often different and result in varying penalties even though some of the following abbreviated summaries may appear to be similar in nature. All violations are a matter of public record under the state's open records laws.)

May 30, 2001 - Notary violated 44-06-13.1(3) by notarizing his own signature. File closed without penalty.

June 18, 2001 - Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. \$50

June 25, 2001 - Notary violated 44-06-13.1(1) by notarizing her own signature. Commission suspended for two years without automatic re-instatement

August 18, 2001 - Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. \$50

August 31, 2001 - Notary violated 44-06-13.1(1) by notarizing a document that was not signed in his presence. File closed without penalty.

September 1, 2001 - Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. \$50

September 24, 2001 - Notary violated 44-06-13.1(2) by not faithfully discharging the duties of Notary Public Office. \$150

October 26, 2001 - Notary violated 44-06-13.1(1) by notarizing a document that was not signed in his presence. \$50

November 8, 2001 - Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. \$50

November 19, 2001 - Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Commission revoked for one year.

November 21, 2001 - Notary violated 44-06-13.1 (5) by dating the jurat with a different date than the date on which the document was signed. Commission revoked for thirty months.

March 4, 2002 - Notary violated 44-06-13 by notarizing for six years without a commission. \$150

March 6, 2002 - Notary violated 44-06-13.1(3) by notarizing his own signature. Commission revoked for six years.

March 20, 2002 - Notary violated 44-06-13.1(3) by notarizing her own signature. Commission revoked for one year.

March 22, 2002 - Notary violated 44-06-13 by notarizing a document after her commission expired. \$150

March 22, 2002 - Notary violated 44-06-13 by notarizing a document after his commission expired. Commission revoked for six months.

April 9, 2002 - Notary violated 44-06-13.1(3) by notarizing her own signature. Commission revoked for one year.

May 6, 2002 - Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. \$150.

Address Change

Within 60 days from the time it changes, state law requires notaries to notify the Secretary of State's office of any change in their address. Otherwise, the Notary is charged a fee of \$10.

If a Notary moves to a bordering county outside of North Dakota, and that state extends reciprocity to the Notary, the Notary must also file an Appointment of Agent (SFN 19369) form with the Secretary's of State's office.

Name Change

When a Notary legally changes his or her name, they must submit the following documents to the Secretary of State's office: a rider to the Notary's surety bond stating both the previous name and new name; a Notary Name Change (SFN 51261) form; and \$10. This form must be filed within 60 days of the time that the name change became effective. If the name change is not done within the 60 days as required by law an additional \$10 fee will be charged.

The Secretary of State's office will then issue an authorization, which will allow the Notary to purchase a new Notary stamp/seal. As soon as the authorization, with an impression of the new seal/stamp, is returned to the Secretary of State's office, a new Certificate of Commission having the new name will be issued to the Notary.

Happy Thanksgiving

Notary Notes is the newsletter of the Licensing Division in the Secretary of State's Office, 600 East Boulevard Avenue Dept 108 Bismarck ND 58505-0500, (701) 328-2901 or Toll Free: 1-800-352-0867, ext. 8-2901

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Operator's Signature

Date

ALVIN A. JAEGER
SECRETARY OF STATE

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March 17, 2003

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

FR: Al Jaeger, Secretary of State

RE: HB 1168 - Notary Public

By law, a notary public is considered an Officer of the State and takes an Oath of Office before they are commissioned. This bill is to clarify procedures and responsibilities related to the duties of a notary. It would also allow a notary to recover his or her expenses if travel is involved.

Section 1:

1. All notaries commissioned after the effective date of the bill will be required to purchase a notary seal, which is photographically reproducible.
2. Establishes in law that a notary's seal is the property of the notary, even if an employer paid for it, and that it must always remain under the direct and exclusive control of the notary.
3. Provides that a notary must affix his or her notary seal each time they perform a notarial act.

Section 2:

1. Provides that each time a notary performs a notarial act, he or she must also list the venue, i.e., state and county, where the notarial act was performed.

Section 3:

1. Provides that it is a violation if the notary does not date his or her notarial act.
2. Adds a provision related to a notary falsely or fraudulently performing a notarial act or impersonating or assuming the identity of another notary.

Section 4:

1. Allows a notary to charge mileage, in addition to the notary fee, if agreed upon in advance.
2. Provides that a notary fee is separate from travel expenses, which expenses are neither mandated nor specified in the law.

Section 5:

1. Adds a reference to N.D.C.C. § 44-06-04 (section 1 of the bill) related to the type of seal.

For your review, I have also enclosed with this testimony a copy of Notary Notes, which was mailed to every notary in November 2002.

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10/2/03
Date

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Date

§ 6-2 Fees for Notarial Acts.

- (a) The maximum fees that may be charged by a notary for notarial acts are:
- (1) for acknowledgments, [dollars] per signature;
 - (2) for oaths or affirmations without a signature, [dollars] per person;

- (3) for jurats, [dollars] per signature;
- (4) for signature witnessings, [dollars] per signature;
- (5) for certified copies, [dollars] per page certified with a minimum total charge of [dollars];
- [(6) for verifications of fact, [dollars] per certificate;] and
- [(7)] for electronic notarizations, as specified in Section 17-2.

- (b) 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 in Subsection (a) and neither specified nor mandated by law.

Comment

Section 6-2 establishes the fee schedule. Subsection (a) identifies all of the different notarial acts, and provides a separate fee for each one. The drafters did not include fee amounts. It was determined that these decisions were best left to the respective jurisdictions. However, the drafters did express a preference for a fee of at least \$10 for any notarial act, because this amount authorized by law in three states (see CAL. GOV'T CODE § 9211; FLA. STAT. ANN. § 117.05(2)(a); and S.D. CODED LAWS § 18-1-9) was deemed to fairly compensate notaries for their time, effort, and potential liability. Enumeration of the various notarial acts was not intended to indicate that each should carry a different fee amount. More than one type of notarial act may command the same fee. (For example, the fee for an acknowledgment and a jurat may be the same.) The list provides the opportunity to set different fee amounts for the authorized notarial acts. Some jurisdictions stipulate a single fee for any and all notarial acts (see, e.g., N.Y. EXEC. LAW § 136; and IOWA CODE ANN. § 33-16-7-1), while others prescribe a fee for each different type of notarial act (see, e.g., ILL. REV. STAT. § 456-17; and N.Y. REV. STAT. ANN. § 14-12-19). By its specific reference, Subparagraph (7) applies only if the jurisdiction adopts Article III of the Act relating to electronic notarizations. If that article is not adopted, the subparagraph may be deleted. Should Article III be adopted without Section 17-2, then the fee schedule in this section shall also apply to electronic notarizations. (See Section 2-12.)

At a minimum, the travel fee covers costs such as public transportation fare, or, if a private vehicle is used, gas, parking, and tolls. The drafters contemplated that the travel fee could include additional expenses as well. For example, if the drafter determines that the notary spend a night away from home, reasonable accommodations and meals would be reimbursable as part of the travel fee. One state currently allows \$10 per day

§ 6-3 Payment Prior to Act.

- (a) A notary may require payment of any fees specified in Section 6-2 prior to performance of a notarial act.
- (b) Any fees paid to a notary prior to performance of a notarial act are non-refundable if:
 - (1) the act was completed; or
 - (2) in the case of travel fees paid in compliance with Section 6-2(b), the act was not completed for reasons stated in Section 5-3(b)(1) or (2) after the notary had traveled to meet the principal.

Comment

Section 6-3 addresses the problem of a notary's expense when they expect considerable time and effort in traveling to perform a notarial act, but are denied payment for travel when the notarial act could not be completed for reasons stated in Subparagraphs 5-3(b)(1) and (2) or when the principal was dissatisfied with a properly performed act. Subsection (a) gives notaries discretion to require prepayment of fees prior to performance of any notarial act. Some notaries may elect to include this provision only for acts requiring travel, particularly verifications of fact (see Subparagraph 5-1(a)(6)), whereas

it is possible that the person requesting the verification may disagree with the notary's assessment of time and effort and refuse to pay. Subsection (b) stipulates that any fees paid to the notary prior to the notarial act are not refundable if (a) the notarial act was not completed for reasons stated in Subparagraphs 5-3(b)(1) and (2) or when the principal was dissatisfied with a properly performed act. Subsection (b) gives notaries discretion to require prepayment of fees prior to performance of any notarial act. Some notaries may elect to include this provision only for acts requiring travel, particularly verifications of fact (see Subparagraph 5-1(a)(6)), whereas

MODEL NOTARY ACT