

OFFICES AND OFFICERS

CHAPTER 370

SENATE BILL NO. 2340

(Senators Unruh, Cook)
(Representatives Heinert, Porter)

AN ACT to create and enact subsection 6 of section 44-04-18.10 of the North Dakota Century Code, relating to protection of records shared for emergency purposes; and to amend and reenact section 44-04-18.4 of the North Dakota Century Code, relating to confidentiality of records regarding emergency planning and response.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-18.4 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.4. Confidentiality of trade secret, proprietary, commercial, financial, and research information.

1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.
2. Under this section, unless the context otherwise requires:
 - a. "Commercial information" means information pertaining to buying or selling of goods and services that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
 - b. "Financial information" means information pertaining to monetary resources of a person that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
 - c. "Proprietary information" includes:
 - (1) Information shared between a sponsor of research or a potential sponsor of research and a public entity conducting or negotiating an agreement for the research.
 - (2) Information received from a private business that has entered or is negotiating an agreement with a public entity to conduct research or manufacture or create a product for potential commercialization.

- (3) A discovery or innovation generated by the research information, technical information, financial information, or marketing information acquired under activities described under paragraph 1 or 2.
 - (4) A document specifically and directly related to the licensing or commercialization resulting from activities described under paragraph 1, 2, or 6.
 - (5) Technical, financial, or marketing records that are received by a public entity, which are owned or controlled by the submitting person, are intended to be and are treated by the submitting person as private, and the disclosure of which would cause harm to the submitting person's business.
 - (6) A discovery or innovation produced by the public entity that an employee or the entity intends to commercialize.
 - (7) A computer software program and components of a computer software program that are subject to a copyright or a patent and any formula, pattern, compilation, program, device, method, technique, or process supplied to a public entity that is the subject of efforts by the supplying person to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that might obtain economic value from its disclosure or use.
 - (8) A discovery or innovation that is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, combination of devices, method, technique, technical know-how or process that is for use, or is used, in the operation of a business and is supplied to or prepared by a public entity that is the subject of efforts by the supplying or preparing person to maintain its secrecy and provides the preparing person an advantage or an opportunity to obtain an advantage over those who do not know or use it or that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, a person that might obtain economic value from its disclosure or use.
- d. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, technical know-how, or process, that:
- (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and
 - (2) Is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information.
3. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.

4. This section does not limit the release or use of records obtained in an investigation by the attorney general or other law enforcement official.
5. Unless made confidential under subsection 1, the following economic development records and information are exempt:
 - a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, expand within this state, or partner with a public entity to conduct research or to license a discovery or innovation. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.
 - b. Trade secrets and proprietary, commercial, or financial information received from a person that is interested in applying for or receiving financing, technical assistance, or other forms of business assistance.
6. Unless made confidential under subsection 1 or made exempt under subsection 5:
 - a. Bids received by a public entity in response to an invitation for bids by the public entity are exempt until all of the bids have been received and opened by the public entity.
 - b. Proposals received by a public entity in response to a request for proposals are exempt records until a notice of intent to award is issued.
 - c. Records included with any bid or proposal naming and generally describing the entity submitting the proposal are open.
7. Unless made confidential under subsection 1, records received or distributed by the state department of emergency services under chapter 37-17.1 and the state local intelligence center from the federal government and any public or private agency or entity for emergency or disaster prevention, protection, mitigation, preparation, response, and recovery, or for cyber or physical threat are exempt. Records in the possession or under the control of a public entity which relate to cybersecurity information or critical infrastructure, the disclosure of which may expose or create vulnerability of critical infrastructure systems; or the safeguarding of telecommunications, electric, water, sanitary sewage, storm water drainage, energy, fuel supply, hazardous liquid, natural gas, coal, or other critical infrastructure system, are exempt.
 - a. Upon receipt of a request for records under this subsection which originated in a federal agency or entity and are in the possession of the state department of emergency services, state local intelligence center, or other public entity, the requester must be referred to the federal agency or entity from which the records originated to submit an application under the applicable federal laws or rules.
 - b. For purposes of this section, "cybersecurity" means processes or capabilities that protect and defend systems, communications, and information from exploitation and unauthorized use or modification.

- c. For purposes of this section, "critical infrastructure" has the same meaning as in subdivision a of subsection 2 of section 44-04-24.
8. Unless made confidential under subsection 1, university research records are exempt. "University research records" means data and records, other than a financial or administrative record, produced or collected by or for faculty or staff of an institution under the control of the state board of higher education in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone, or in conjunction with a governmental or private entity, provided the information has not been publicly released, published, or patented.
 9. Personally identifiable study information is confidential. "Personally identifiable study information" means information about an individual participating in a human research study or project at an institution under the control of the state board of higher education which requires prospective institutional review board review or a determination of exemption, if the information can be used to distinguish or trace the individual's identity, or is linked or linkable to the individual. Examples of personally identifiable study information include name, maiden name, mother's maiden name, alias, personal identification number, social security number, passport number, driver's license number, taxpayer identification number, financial account or credit card number, address, email address, photographic images, fingerprints, handwriting, and other biometric data. Information about participants in human subjects research which does not constitute personally identifiable study information but is part of a human subjects research study or project at an institution under the control of the state board of higher education requiring prospective institutional review board review or a determination of exemption is a university research record under subsection 8.
 10. Subsections 8 and 9 do not apply to a student record or other information disclosed by an institution under the control of the state board of higher education to the statewide longitudinal data system.

(Contingent effective date - [See note](#)) Confidentiality of trade secret, proprietary, commercial, financial, and research information.

1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.
2. Under this section, unless the context otherwise requires:
 - a. "Commercial information" means information pertaining to buying or selling of goods and services that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
 - b. "Financial information" means information pertaining to monetary resources of a person that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
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- (1) Information shared between a sponsor of research or a potential sponsor of research and a public entity conducting or negotiating an agreement for the research.
 - (2) Information received from a private business that has entered or is negotiating an agreement with a public entity to conduct research or manufacture or create a product for potential commercialization.
 - (3) A discovery or innovation generated by the research information, technical information, financial information, or marketing information acquired under activities described under paragraph 1 or 2.
 - (4) A document specifically and directly related to the licensing or commercialization resulting from activities described under paragraph 1, 2, or 6.
 - (5) Technical, financial, or marketing records that are received by a public entity, which are owned or controlled by the submitting person, are intended to be and are treated by the submitting person as private, and the disclosure of which would cause harm to the submitting person's business.
 - (6) A discovery or innovation produced by the public entity that an employee or the entity intends to commercialize.
 - (7) A computer software program and components of a computer software program that are subject to a copyright or a patent and any formula, pattern, compilation, program, device, method, technique, or process supplied to a public entity that is the subject of efforts by the supplying person to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that might obtain economic value from its disclosure or use.
 - (8) A discovery or innovation that is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, combination of devices, method, technique, technical know-how or process that is for use, or is used, in the operation of a business and is supplied to or prepared by a public entity that is the subject of efforts by the supplying or preparing person to maintain its secrecy and provides the preparing person an advantage or an opportunity to obtain an advantage over those who do not know or use it or that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, a person that might obtain economic value from its disclosure or use.
- d. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, technical know-how, or process, that:
- (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and

- (2) Is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information.
3. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or department of environmental quality or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.
 4. This section does not limit the release or use of records obtained in an investigation by the attorney general or other law enforcement official.
 5. Unless made confidential under subsection 1, the following economic development records and information are exempt:
 - a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, expand within this state, or partner with a public entity to conduct research or to license a discovery or innovation. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.
 - b. Trade secrets and proprietary, commercial, or financial information received from a person that is interested in applying for or receiving financing, technical assistance, or other forms of business assistance.
 6. Unless made confidential under subsection 1 or made exempt under subsection 5:
 - a. Bids received by a public entity in response to an invitation for bids by the public entity are exempt until all of the bids have been received and opened by the public entity.
 - b. Proposals received by a public entity in response to a request for proposals are exempt records until a notice of intent to award is issued.
 - c. Records included with any bid or proposal naming and generally describing the entity submitting the proposal are open.
 7. Unless made confidential under subsection 1, records received or distributed by the state department of emergency services under chapter 37-17.1 and the state local intelligence center from the federal government and any public or private agency or entity for emergency or disaster prevention, protection, mitigation, preparation, response, and recovery, or for cyber or physical threat are exempt. Records in the possession or under the control of a public entity which relate to cybersecurity information or critical infrastructure, the disclosure of which may expose or create vulnerability of critical infrastructure systems; or the safeguarding of telecommunications, electric, water, sanitary sewage, storm water drainage, energy, fuel supply, hazardous liquid, natural gas, coal, or other critical infrastructure system, are exempt.
 - a. Upon receipt of a request for records under this subsection which originated in a federal agency or entity and are in the possession of the

- state department of emergency services, state local intelligence center, or other public entity, the requester must be referred to the federal agency or entity from which the records originated to submit an application under the applicable federal laws or rules.
- b. For purposes of this section, "cybersecurity" means processes or capabilities that protect and defend systems, communications, and information from exploitation and unauthorized use or modification.
 - c. For purposes of this section, "critical infrastructure" has the same meaning as in subdivision a of subsection 2 of section 44-04-24.
8. Unless made confidential under subsection 1, university research records are exempt. "University research records" means data and records, other than a financial or administrative record, produced or collected by or for faculty or staff of an institution under the control of the state board of higher education in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone, or in conjunction with a governmental or private entity, provided the information has not been publicly released, published, or patented.
 9. Personally identifiable study information is confidential. "Personally identifiable study information" means information about an individual participating in a human research study or project at an institution under the control of the state board of higher education which requires prospective institutional review board review or a determination of exemption, if the information can be used to distinguish or trace the individual's identity, or is linked or linkable to the individual. Examples of personally identifiable study information include name, maiden name, mother's maiden name, alias, personal identification number, social security number, passport number, driver's license number, taxpayer identification number, financial account or credit card number, address, email address, photographic images, fingerprints, handwriting, and other biometric data. Information about participants in human subjects research which does not constitute personally identifiable study information but is part of a human subjects research study or project at an institution under the control of the state board of higher education requiring prospective institutional review board review or a determination of exemption is a university research record under subsection 8.
 10. Subsections 8 and 9 do not apply to a student record or other information disclosed by an institution under the control of the state board of higher education to the statewide longitudinal data system.

SECTION 2. Subsection 6 of section 44-04-18.10 of the North Dakota Century Code is created and enacted as follows:

6. Records confidential or exempt under subsection 7 of section 44-04-18.4 and which are required to be disclosed to another entity for emergency or disaster prevention, protection, mitigation, response, and recovery or for cybersecurity planning, mitigation, or threat remain confidential or exempt after the required disclosure.

Approved April 11, 2019

Filed April 12, 2019

CHAPTER 371

SENATE BILL NO. 2221

(Senators J. Lee, Kreun, Mathern)
(Representatives Roers Jones, Schatz)

AN ACT to amend and reenact section 44-04-18.6 of the North Dakota Century Code, relating to exempting records of communications between legislators and public employees from open records laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-18.6 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.6. Access to legislative records and information.

1. The following records, regardless of form or characteristic, of or relating to the legislative council, the legislative management, the legislative assembly, the house of representatives, the senate, or a member of the legislative assembly are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota: a
 - a. ~~A~~ record of a purely personal or private nature,~~a~~;
 - b. ~~A~~ record that is legislative council work product or is legislative council-client communication,~~a~~;
 - c. ~~A~~ record that reveals the content of private communications between a member of the legislative assembly and any person,~~i~~; and, ~~except~~
 - d. Except with respect to a governmental entity determining the proper use of telephone service, a record of telephone usage which identifies the parties or lists the telephone numbers of the parties involved.
2. The exception in subdivision c of subsection 1 applies to records possessed by a member of the legislative assembly or by any other public officer or employee.
3. This section does not apply to any record distributed at a meeting subject to section 44-04-19 and section 5 of article XI of the Constitution of North Dakota.

Approved April 24, 2019

Filed April 24, 2019

CHAPTER 372

HOUSE BILL NO. 1392

(Representatives Zubke, Dockter, Nathe, Westlind)
(Senator Bekkedahl)

AN ACT to create and enact section 44-04-18.29 of the North Dakota Century Code, relating to confidentiality of records received by the board of university and school lands; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 44-04-18.29 of the North Dakota Century Code is created and enacted as follows:

44-04-18.29. Information received for audits by the board of university and school lands.

A record received by the board of university and school lands from a private entity for purposes of the board's audit of the entity's coal, oil, gas, or other royalty payments to the board is confidential. However, the board may furnish information to the attorney general, other state agencies, a prosecuting official requiring the information for use in the prosecuting official's official duties, or for legislative investigations under chapter 54-03.2. Confidential information furnished by the board to any third party under this section remains confidential while in the possession of the third party. Confidential information received by the board from any third party under this section remains confidential while in the possession of the board.

Approved March 21, 2019

Filed March 22, 2019

CHAPTER 373

SENATE BILL NO. 2218

(Senators J. Lee, J. Roers, K. Roers)
(Representatives Roers Jones, Westlind)

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to records of individuals who provide information to public social service agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Identity of reporter to social services agency - Exempt records.

1. For purposes of this section:
 - a. "Human services" means services provided to an individual or an individual's family in need of services to assist the individual or the individual's family in achieving and maintaining basic self-sufficiency, including physical health, mental health, education, welfare, food and nutrition, and housing; and
 - b. "Public social services agency" means a state, county, or local public agency that provides human services, and includes regional human service centers, county social services boards, multicounty social services districts, and the department of human services.
2. The name, address, telephone number, electronic mail address, or other record that reasonably could be used to identify an individual who provided information to a public social service agency is an exempt record if:
 - a. The information relates to a matter involving human services over which the agency has regulatory jurisdiction; and
 - b. The agency determines the individual had a good-faith belief the information related to a possible violation of law when the individual provided it to the agency.

Approved March 21, 2019

Filed March 22, 2019

CHAPTER 374

HOUSE BILL NO. 1132

(Representatives Lefor, Bosch, Meier)
(Senators Burckhard, D. Larson, Wardner)

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to an exemption from open records laws for background interviews regarding law enforcement officer job applicants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Background interviews for law enforcement officer applications - Exempt records.

Any record revealing the substance of, or the individual interviewed in, a background interview conducted as part of the consideration of an applicant for a position as a law enforcement officer is an exempt record. For purposes of this section, "background interview" means an interview with an individual, other than the applicant for a law enforcement officer position, which relates to the fitness, character, behavior, or other qualifications of the applicant.

Approved March 12, 2019

Filed March 13, 2019

CHAPTER 375

SENATE BILL NO. 2209

(Senators Klein, Heckaman, Myrdal)
(Representatives Damschen, Devlin, Holman)

AN ACT to amend and reenact section 44-04-24 of the North Dakota Century Code, relating to protection for records related to critical infrastructure and security planning, mitigation, or threats.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-24 of the North Dakota Century Code is amended and reenacted as follows:

44-04-24. Security system plan - Disaster and cybersecurity information - Exemption.

1. A security system plan kept by a public entity ~~is, and records regarding disaster mitigation, preparation, response, vulnerability, or recovery, or for cybersecurity planning, mitigation, or threat, are exempt from the provisions of~~ section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.
2. As used in this section:
 - a. "Critical infrastructure" means public buildings, systems, including telecommunications centers and computers, power generation plants, dams, bridges, and similar key resources, ~~and systems related to utility services, fuel supply, energy, hazardous liquid, natural gas, or coal,~~ whether physical or virtual, so vital to the state that the incapacity or destruction of these systems would have a debilitating impact on security, state economic security, state public health or safety, or any combination of those matters.
 - b. "Security system plan" includes ~~all records;~~
 - (1) ~~Records,~~ information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, communications, or consultations ~~or portions of any such plan~~ relating directly to the physical or electronic security of a public facility, or any critical infrastructure, whether owned by or leased to the state or any of its political subdivisions, or any privately owned or leased critical infrastructure if the plan or a portion of the plan is in the possession of a public entity; ~~threat~~
 - (2) ~~Information relating to cybersecurity defenses, or threats, attacks, attempted attacks, and vulnerabilities of cyber system operations relating directly to the physical or electronic security of a public facility, or any critical infrastructure, whether owned by or leased to the state or any of its political subdivisions, or any privately owned or leased~~

critical infrastructure if the information is in the possession of a public entity;

(3) Threat assessments; vulnerability

(4) Vulnerability and capability assessments conducted by a public entity, or any private entity; threat

(5) Threat response plans; and emergency

(6) Emergency evacuation plans.

3. This exemption applies to security system plans received by a public entity before, on, or after March 20, 2003.
4. Nothing in this section may be construed to limit disclosure required for necessary construction, renovation, or remodeling work on a public building. Disclosure under this subsection does not constitute public disclosure.
5. Records deemed exempt under this section and disclosed to another entity continue to be exempt in the possession of the receiving entity.

Approved April 8, 2019

Filed April 9, 2019

CHAPTER 376

HOUSE BILL NO. 1110

(Judiciary Committee)

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

AN ACT to create and enact section 44-06.1-13.1 and a new section to chapter 44-06.1 of the North Dakota Century Code, relating to the adoption of the Revised Uniform Law on Notarial Acts; and to amend and reenact sections 11-18-15, 44-06.1-01, 44-06.1-03, 44-06.1-18, and 47-19-26 of the North Dakota Century Code, relating to the adoption of the Revised Uniform Law on Notarial Acts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-18-15 of the North Dakota Century Code is amended and reenacted as follows:

11-18-15. Notary seal on documents filed with recorder - Stamp or imprint allowed.

The notary seal on any document filed with a recorder may be in:

1. In either a stamped or an imprinted form; or
2. An official stamp, as defined in section 44-06.1-01.

SECTION 2. AMENDMENT. Section 44-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

44-06.1-01. Definitions.

As provided in this chapter:

1. "Acknowledgment" means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or person identified in the record.
2. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
3. "Electronic signature" means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.
4. "In a representative capacity" means acting as:
 - a. An authorized officer, agent, partner, trustee, or other representative for a person other than an individual;

- b. A public officer, personal representative, guardian, or other representative, in the capacity stated in a record;
 - c. An agent or attorney in fact for a principal; or
 - d. An authorized representative of another in any other capacity.
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 subsection 7 of section 44-06.1-23, and noting a protest of a negotiable instrument.
6. "Notarial officer" means a notary public or other individual authorized to perform a notarial act.
7. "Notary public" means an individual commissioned to perform a notarial act by the secretary of state.
8. "Official stamp" means a physical image affixed to a tangible record or an electronic image attached to or logically associated with an electronic record.
9. "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- ~~10.~~ "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- ~~10-11.~~ "Sign" means, with present intent to authenticate or adopt a record:
- a. To execute or adopt a tangible symbol; or
 - b. To attach to or logically associate with the record an electronic symbol, sound, or process.
- ~~11-12.~~ "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record.
- ~~12-13.~~ "Stamping device" means:
- a. A physical device capable of affixing to a tangible record an official stamp; or
 - b. An electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.
- ~~13-14.~~ "Verification on oath or affirmation" means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

SECTION 3. AMENDMENT. Section 44-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

44-06.1-03. Authority to perform notarial acts.

1. A notarial officer may perform notarial acts authorized by this chapter or by other law of this state.
2. A notarial officer may certify a tangible copy of an electronic record is an accurate copy of the electronic record. The prohibition under subdivision b of subsection 7 of section 44-06.1-23 does not apply to a tangible copy certified under this subsection.

SECTION 4. Section 44-06.1-13.1 of the North Dakota Century Code is created and enacted as follows:

44-06.1-13.1. Notarial Act performed for remotely located individual.

1. As used in this section, unless the context otherwise requires:
 - a. "Communication technology" means an electronic device or process that:
 - (1) Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and
 - (2) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.
 - b. "Foreign state" means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.
 - c. "Identity proofing" means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.
 - d. "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.
 - e. "Remotely located individual" means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection 3.
2. A remotely located individual may comply with section 44-06.1-05 by using communication technology to appear before a notary public.
3. A notary public located in this state may perform a notarial act using communication technology for a remotely located individual if:
 - a. The notary public:
 - (1) Has personal knowledge under subsection 1 of section 44-06.1-06 of the identity of the individual;
 - (2) Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing

- before the notary public under subsection 2 of section 44-06.1-06 or this section; or
- (3) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing:
- b. The notary public is able reasonably to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;
 - c. The notary public, or a person acting on behalf of the notary public, creates an audiovisual recording of the performance of the notarial act; and
 - d. For a remotely located individual located outside the United States:
 - (1) The record:
 - (a) Is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or
 - (b) Involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and
 - (2) The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.
4. If a notarial act is performed under this section, the certificate of notarial act required by section 44-06.1-14 and the short-form certificate provided in section 44-06.1-19 must indicate the notarial act was performed using communication technology.
5. A short-form certificate provided in section 44-06.1-19 for a notarial act subject to this section is sufficient if it:
- a. Complies with the rules adopted under subdivision a of subsection 8; or
 - b. Is in the form provided in section 44-06.1-19 and contains a statement substantially as follows: "This notarial act involved the use of communication technology."
6. A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public shall retain the audiovisual recording created under subdivision c of subsection 3 or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under subdivision d of subsection 8, the recording must be retained for a period of at least ten years after the recording is made.
7. Before a notary public performs the notary public's initial notarial act under this section, the notary public must notify the secretary of state that the notary public will be performing notarial acts with respect to remotely located

individuals and identify the technologies the notary public intends to use. If the secretary of state has established standards under subsection 8 and section 44-06.1-25 for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

8. In addition to adopting rules under section 44-06.1-25, the secretary of state may adopt rules under this section regarding performance of a notarial act. The rules may:
 - a. Prescribe the means of performing a notarial act involving a remotely located individual using communication technology;
 - b. Establish standards for communication technology and identity proofing;
 - c. Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and
 - d. Establish standards and a period for the retention of an audiovisual recording created under subdivision c of subsection 3.
9. Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the secretary of state shall consider:
 - a. The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the national association of secretaries of state;
 - b. Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and
 - c. The views of governmental officials and entities and other interested persons.
10. By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audiovisual recording created under subdivision c of subsection 3, the provider of the communication technology, identity proofing, or storage appoints the secretary of state as the provider's agent for service of process in any civil action in this state related to the notarial act.

SECTION 5. AMENDMENT. Section 44-06.1-18 of the North Dakota Century Code is amended and reenacted as follows:

44-06.1-18. Notification regarding performance of notarial acts on electronic record - Selection of technology - Acceptance of tangible copy of electronic record.

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 44-06.1-25, 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.
3. A recorder shall accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies the tangible copy is an accurate copy of the electronic record.

SECTION 6. A new section to chapter 44-06.1 of the North Dakota Century Code is created and enacted as follows:

Journals.

1. A notary public shall maintain a journal in which the notary public chronicles all notarial acts the notary public performs with respect to a remotely located individual under section 44-06.1-13.1. The notary public shall retain the journal for ten years after the performance of the last notarial act chronicled in the journal.
2. A journal may be created on a tangible medium or in an electronic format. A notary public shall maintain only one journal at a time to chronicle all notarial acts performed regarding tangible records and one or more journals to chronicle all notarial acts performed regarding electronic records. If a journal is maintained on a tangible medium, it must be a permanent, bound register with numbered pages. If the journal is maintained in an electronic format, it must be in a permanent, tamper-evident electronic format complying with the rules of the secretary of state.
3. An entry in a journal must be made contemporaneously with performance of the notarial act and contain the following information:
 - a. The date and time of the notarial act;
 - b. A description of the record, if any, and type of notarial act;
 - c. The full name and address of each individual for whom the notarial act is performed;
 - d. If identity of the individual is based on personal knowledge, a statement to that effect;
 - e. If identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration of the identification credential; and
 - f. The fee, if any, charged by the notary public.

4. If the journal of a notary public is lost, the notary public loses access to the journal, or the journal is stolen, the notary public promptly shall notify the secretary of state upon discovering the journal is lost, access is lost, or the journal is stolen.
5. On resignation from, or the revocation or suspension of, the commission of a notary public, the notary public shall retain the journal in accordance with subsection 1 of this section and inform the secretary of state where the journal is located.
6. Instead of retaining a journal as provided in subsections 1 and 5, a current or former notary public may transmit the journal to a repository approved by the secretary of state.
7. Upon the death or adjudication of incompetency of a current or former notary public, the personal representative or guardian of the notary public shall retain the journal as provided in subsections 1 and 5 or transmit the journal to a repository approved by the secretary of state.

SECTION 7. AMENDMENT. Section 47-19-26 of the North Dakota Century Code is amended and reenacted as follows:

47-19-26. Certificate of acknowledgment - Forms.

An officer taking an acknowledgment of an instrument within this state must endorse ~~thereon~~, or attach ~~thereto, the instrument~~ a certificate substantially in the forms prescribed in sections 47-19-27, 47-19-28, 47-19-29, and 47-19-30 or in subsections 1 and 2 of section 44-06.1-19.

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