

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2196
(Senators Hacker, Klein, J. Lee)
(Representatives Boe, Heller, Potter)

AN ACT to create and enact section 44-06-13.2 of the North Dakota Century Code, relating to disciplinary proceedings for a notary public; and to amend and reenact sections 44-06-02, 44-06-12, and 44-06-13.1 of the North Dakota Century Code, relating to notary commissions and to prohibited acts by a notary public.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-06-02 of the North Dakota Century Code is amended and reenacted as follows:

44-06-02. Commission - Record - Fee - Notice. The secretary of state shall issue a commission to each notary public appointed by the secretary of state in the notary's legal name. Before issuing a commission, the secretary of state may require proof acceptable to the secretary of state of the notary's legal name. The notary shall post the commission in a conspicuous place in the notary's office. The secretary of state shall collect thirty-six dollars for the issuance of the commission. The secretary of state shall remit all fees collected under this section to the state treasurer for deposit in the general fund. The secretary of state shall keep a record of appointments and the date of the expiration of the appointments. The secretary of state shall notify each notary public by mail at least thirty days before the expiration of the notary public's term of the date upon which the notary public's commission will expire. The notice must be addressed to the notary public at the last-known place of residence. Each notary public issued a commission shall notify the secretary of state by mail 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 2. AMENDMENT. Section 44-06-12 of the North Dakota Century Code is amended and reenacted as follows:

44-06-12. Notary public commission - Venue - Date of expiration - Form of jurat. Every notary public taking an acknowledgment to any instrument, immediately following the notary's signature to the jurat or certificates of acknowledgment of the type set out in chapter 47-19, shall legibly print, stamp, or type the notary's name and ~~endorse~~ include the date of the expiration of the commission. Each jurat or certificate of acknowledgment must also contain the name of the state and county where the notarial act is being performed. The ~~endorsement~~ expiration date must be stamped or printed upon the instrument and must be substantially in the following form:

My commission expires _____.

Each jurat must be substantially in the following form:

Subscribed and sworn to before me on _____, _____.

(Notary Seal) _____

(signature of notary)

Notary Public

My commission expires _____

SECTION 3. AMENDMENT. Section 44-06-13.1 of the North Dakota Century Code is amended and reenacted as follows:

44-06-13.1. Prohibited acts - Penalty.

1. A notary public may not notarize a signature on a document if:
 - 1- a. The document was not first signed or re-signed in the presence of the notary public, in the case of a jurat, or in the case of a certificate of acknowledgment, was not acknowledged in the presence of the notary public.
 - 2- b. The name of the notary public or the spouse of the notary public appears on the document as a party to the transaction.
 - 3- c. The signature is that of the notary public or the spouse of the notary public.
 - 4- 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.
 - 5- e. The date of the jurat or certificate of acknowledgment is not the actual date the document is to be notarized or the jurat or certificate of acknowledgment is undated.
 - 6- f. The signature on the document or the notarial certificate is not an original signature, except as otherwise provided by law.
 - 7- g. The notary is falsely or fraudulently signing or notarizing a document, jurat, or certificate of acknowledgment or in any other way is impersonating or assuming the identity of another notary.
 - 8- h. ~~Within five years of the date of issuance of a commission or renewal of a commission, the notary is convicted of a criminal offense which the secretary of state determines has a direct bearing upon the notary's ability to serve the public as a notary public~~ 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.
2. A notary 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 1.
3. A notary public who violates this section is guilty of an infraction ~~and the notary public's commission may be revoked by the secretary of state or the secretary of state may impose a lesser sanction using the procedure under chapter 28-32.~~

SECTION 4. Section 44-06-13.2 of the North Dakota Century Code is created and enacted as follows:

44-06-13.2. Disciplinary proceedings.

1. The secretary of state may deny, revoke, or suspend a commission granted under this chapter on the following grounds:
 - a. Conviction by a court of competent jurisdiction of an offense related to the honesty, integrity, or trustworthiness of the notary which the secretary of state determines would render the notary or notary applicant unfit to serve the public as a notary.
 - b. Fraud, misrepresentation, or false statement in obtaining or renewing a commission.
 - c. Failure by a commissioned notary to report in writing to the secretary of state the notary's conviction by a court of competent jurisdiction of a felony within ninety days of the date of the conviction.
 - d. Engaging in any act prohibited under section 44-06-13.1.
2. The secretary of state may impose a lesser sanction for a violation of subsection 1 if determined appropriate by the secretary of state under the pertinent facts and circumstances. A lesser sanction includes imposition of a civil penalty not to exceed five hundred dollars or a letter of reprimand.
3. Any person may file a complaint with the secretary of state seeking denial, revocation, or suspension of a commission issued or to be issued by the secretary of state. The secretary of state shall provide a complaint form. The complainant shall use that form and the form must be verified under oath by the complainant or duly authorized officer of the complainant. If the secretary of state determines that a complaint alleges facts that, if true, would require denial, revocation, or suspension of a commission, the secretary of state shall initiate a hearing without undue delay. If the secretary of state determines a complaint does not state facts warranting a hearing, the secretary of state may dismiss the complaint. The secretary of state may initiate a hearing for denial, revocation, or suspension of a license on the secretary of state's own motion.
4. Any person whose commission has been revoked or suspended may apply to the secretary of state for reinstatement of the commission or termination of the suspension.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2196.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 92 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,
at _____ o'clock _____ M.

Secretary of State