Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019

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~~on, or attach ~~thereto~~to, 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.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1110.

House Vote:	Yeas 92	Nays 0	Absent 2
Senate Vote:	Yeas 31	Nays 14	Absent 2

Chief Clerk of the House

Received by the Governor at 10:05 AM. on March 6, 2019.

Approved at 12:01 PM. on March 8, 2019.

Governor

Filed in this office this 8th day of March, 2019,

at 1:44 o'clock P. M.

Secretary of State