

**TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE BILL NO. 1083
HOUSE JUDICIARY COMMITTEE
JANUARY 25, 2023**

Members of the House Judiciary Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of House Bill No. 1083, relating to amendments to the Revised Uniform Law on Notarial Acts (2021) (RULONA). I am also the Chairman of the North Dakota Commission on Uniform State Laws, which is provided for in Chapter 54-55 of the North Dakota Century Code. In addition, I am a Commissioner on the National Uniform Law Commission (ULC) representing the North Dakota House of Representatives. The ULC was originally formed in 1892 and North Dakota has been a member since 1893. The mission of the ULC is to promulgate uniform Acts that the States can enact as a part of their own statutory laws and to provide uniformity among the States. North Dakota has enacted over 100 uniform Acts and revisions.

North Dakota has had laws relating to notaries public for many years and had enacted the original Uniform Law on Notarial Acts. A notary public is an individual authorized by the Secretary of State to perform notarial acts in North Dakota. The revised Act, known as RULONA, was drafted by a committee of the ULC after considerable study during 2008 to 2010 and was officially approved by the ULC in 2010. I served on the drafting committee for the RULONA project. North Dakota was the first State to enact RULONA in 2011. RULONA is codified in Chapter 44-06.1 of the North Dakota Century Code.

The ULC amended RULONA in response to changing technology with respect to remote notarization and North Dakota enacted those amendments in 2019. In 2021, the ULC further amended RULONA in response to a rapidly emerging trend among the States to authorize the performance of notarial acts by means of audiovisual technology.

Traditionally, an individual was required to physically appear before a notary public to sign certain legal documents, which were then notarized by a certificate from the notary public. In recent years, technology and commercially available identification services have made it possible to perform notarial acts for persons who are not in the physical presence of a notary public.

HB 1083 amends Section 47-06.1-13.1 to enact the most recent amendment to RULONA by setting out the procedure to be followed in subsections 4 through 8 beginning at the bottom of page 2 of the bill. The amendment provides that the notary and the individual to sign the document must be in remote audiovisual contact and an audiovisual recording must be made of the process. The notary displays the document to be signed to the remotely located individual, that individual also has the same document, and then signs it. The individual makes a declaration to the notary under penalty of perjury in the form set out on page 3, lines 9 through 19. The individual must

then send the signed document and the declaration to the notary no later than 3 days after the notarial act was performed.

The notary records the individual signing the document and the declaration and after receipt of the document executes a certificate of notarial act in the form set out at the bottom of page 3 of the bill. Subsection 6 on page 4 provides that the notarial act is effective as of the date that the remotely located individual signed the document. Subsection 7 provides that subsection 5 does not preclude use of another acceptable procedure. Subsection 8 provides that the notary may use communication technology to administer an oath or affirmation to a remotely located individual if the notary identifies the individual, creates an audiovisual recording of the individual taking the oath or affirmation, and retains the recording for at least 10 years.

Remote notarizations are often used in the closing of real property transactions when the buyer, seller, and lender cannot physically be in the same place at the same time to consummate the purchase of property. This procedure allows for an orderly and timely loan closing in those cases.

Members of the committee, I urge you to make a “do pass” recommendation on HB 1083 so that North Dakota can keep up with the changes in communication technology for use in remote notarizations. Attached to my testimony is more information about the ULC and the North Dakota Commission, and a summary of the ULC amendments to RULONA (2021) contained in HB 1083.



North Dakota Legislative Council

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RECOMMENDATIONS OF THE NORTH DAKOTA COMMISSION ON UNIFORM STATE LAWS - 2023 LEGISLATIVE SESSION

North Dakota Century Code Section 54-55-01 establishes the North Dakota Commission on Uniform State Laws, consisting of:

- An individual engaged in the practice of law in this state (Jacob Rodenbiker);
- The dean or a full-time member of the faculty of the law school of the University of North Dakota (Bradley Myers);
- A law-trained judge of a court of record in this state (Supreme Court Justice Jerod E. Tufte);
- A member of the House of Representatives (Representative Lawrence R. Klemin);
- A member of the Senate (Senator David Hogue);
- A member of the Legislative Council staff (Jennifer S. N. Clark);
- A member appointed by the Attorney General (Parrell D. Grossman);
- Any residents of this state who, because of long service in the cause of uniformity of state legislation, have been elected life members of the National Conference of Commissioners on Uniform State Laws (Owen L. Anderson, Jay E. Buringrud, District Judge Gail H. Hagerty, and Candace Zierdt); and
- Any residents of this state who have been previously appointed to at least 5 years of service on the commission (David Nething).

Commissioners are required to attend the annual meeting of the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission (ULC), and to promote uniformity in state laws on those subjects for which uniformity may be deemed desirable and practicable. Under Section 54-55-04, the commission may submit its recommendations for enactment of the uniform and model laws to the Legislative Management for its review and recommendation.

On June 27, 2022, the commission met and recommended the following three uniform Acts for introduction during the 2023 legislative session:

- Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act (UCRUDIIA), which the ULC approved in 2018, addresses the disclosure of private images of nudity or sexual conduct without consent. The Act creates a civil cause of action; protects victims' identities; and provides various remedies. The UCRUDIIA has been enacted by seven states. A copy of the ULC summary of the Act is attached as [Appendix A](#).
- Uniform Commercial Code (UCC) amendments, which the ULC approved in 2022. The amendments to the UCC address emerging technologies, providing updated rules for commercial transactions involving virtual currencies, distributed ledger technologies (including blockchain), artificial intelligence, and other technological developments. The amendments span almost every article of the UCC and add a new Article 12 addressing certain types of digital assets defined as "controllable electronic records" (CERs). The amendments provide new default rules to govern transactions involving these new technologies and clarify the UCC's applicability to mixed transactions involving both goods and services. The amendments also contain some miscellaneous revisions unrelated to technological developments but providing needed clarification. A copy of the ULC summary of the amendments is attached as [Appendix B](#).
- Revised Uniform Law on Notarial Acts (RULONA), which the ULC approved in 2010 and most recently revised in 2021. Amendments to the RULONA, including a new Section 14A on remote notarization, were approved by the ULC in 2018, resulting in RULONA (2018). The ULC approved further amendments to the uniform Act in 2021 to accommodate remote ink notarization and to establish that a notary may administer an oath or affirmation remotely via communication technology. North Dakota enacted RULONA in 2011 and enacted the 2018 amendments in 2019. A copy of the ULC summary of the Act is attached as [Appendix C](#).



REVISED UNIFORM LAW ON NOTARIAL ACTS (2021)

The Revised Uniform Law on Notarial Acts (RULONA) was promulgated by the Uniform Law Commission (ULC) in 2010. Among its features, it included provisions to provide a stable infrastructure for the performance of notarial acts with respect to electronic records and signatures.

Amendments to the Revised Uniform Law on Notarial Acts, including a new Section 14A on remote notarization, were approved by the ULC in 2018, resulting in RULONA (2018). The ULC approved further amendments to the uniform act in 2021 to accommodate remote ink notarization and to establish that a notary may administer an oath or affirmation remotely via communication technology. If a state has already adopted RULONA (2010), it will update to the current version by enacting new subsection 4(c), new Section 14A, and new subsection 20(c). If a state has not previously enacted a version of this uniform act, it should enact the 2021 version.

This Act was prepared in response to a rapidly emerging trend among the states to authorize the performance of notarial acts by means of audio-visual technology. Traditionally, an individual has been required to physically appear before a notary public. In recent years, technology and commercially available identification services have made it possible to perform notarial acts for persons who are not in the physical presence of a notary public. This Act authorizes remote notarization without geographic limits on the location of the signer.

This Act updates earlier versions by authorizing a notary public to perform notarial acts for remotely located individuals using communication and identity-proofing technology provided its requirements have been fulfilled. The new provisions:

- Provide that an individual may appear before a notary public by means of communication technology and thereby comply with the provisions of Section 6 calling for appearance before a notary public (Section 14A(b)).
- Define communication technology as any means or process that allows a notary public and a remotely located individual to communicate with each other simultaneously (Section 14A(a)(1)(A)). Specific technology is not identified in the amendment.
- Specify the means by which a notary public must identify a remotely located individual (Section 14A(c)(1)). This includes personal knowledge of the identity of the individual, and evidence of the identity of the remotely located individual by oath or affirmation from a credible witness.

- Permit a notary public to identify a remotely located individual by at least two different types of identity-proofing processes or services (Section 14A(c)(1)(C)). This may include having a remote individual answer questions for which there is a high probability that only the true individual would be able to answer correctly or using biometric identification technology or credential analysis.
- Require that an audio-visual recording of the performance of the notarial act be created (Section 14A(c)(3)).
- Address how a notary public may use communication technology to perform a notarial act with respect to a tangible record (Section 14A(d)-(g)).
- Permit a notary public to utilize communication technology to administer an oath or affirmation to a remotely located individual (Section 14A(h)).
- Provide that the certificate of notarial act required under Section 15 must indicate that a notarial act performed in accordance with this Section was done by means of communication technology (Section 14A(i)).
- Provide that the commissioning officer may adopt rules regarding the performance of notarial acts for remotely located individuals (Section 14A(m)).

The Act also now specifies that the notarial officer may certify that a tangible copy is an accurate copy of an electronic record and that such certifications may be accepted for recording into the real estate records.

For further information about RULONA (2021), please contact Legislative Counsel Haley Tanzman at (312) 450-6620 or htanzman@uniformlaws.org.