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TESTIMONY OF REP. LAWRENCE R. KLEMIN HOUSE BILL NO. 1083 SENATE JUDICIARY COMMITTEE MARCH 8, 2023

Members of the Senate 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 recommend “do pass” 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.

Rep. Lawrence R. Klemin