**2019 HOUSE JUDICIARY COMMITTEE**

**HB 1110**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**
Prairie Room, State Capitol

HB 1110
1/9/2019
30609

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Marjorie Conley

**Explanation or reason for introduction of bill/resolution:**

A BILL relating to the adoption of the Revised Uniform Law on Notarial Acts.

**Minutes:** Attachment 1,2,3

**Chairman K. Koppelman:** Opened the hearing on HB 1110.

**Representative Klemin:** Introduced the bill. (Attachment #1) Read his testimony.(1:46-8:25)

**Representative Paur:** How would the stamping work electronically?

**Representative Klemin:** That is done now and digitized and can be printed out and the material officer can certify that the copy if accurate.

**Representative Jones:** What constitutes credible witness?

**Representative Klemin:** A credible witness is anyone the notary decides is credible at that location. How long the audio visual recording should be kept; it is ten years.

**Al Jaegar, Secretary of State:** Virginia has opened this up. Discussed the uniform laws throughout the country. (12:00-14:34) National Association of Secretaries of State has come up with guidelines and we will be following these guidelines. We have no problems with these notary statutes.

**Chairman K. Koppelman:** Background for committee, explain the roll of the Secretary of State's Office with respect to notaries so they are clear on that.

**Al Jaegar:** We have 13,000 commissioned notaries in the state. We oversee how that is done and the penalties for not following the rules.

**Representative Jones:** Where will this be used.

**Al Jaegar:** There is awareness of some amendments that will be offered. The application of this is going to be beyond this office. There are many different situations where this will be used.

**Nick Hacker, President/CEO, ND Guaranty and Title Co**: (Attachment #2) Went over handout. This provides ease of processing legal documents. Discussed how this can be done now so that it is so much easier saving time and travel costs for veterans. It is economical and extremely secure. It also protects North Dakota Notaries. Montana can do it electronically now and we cannot do that here. This is a national trend. I have some amendments to hand out. (Attachment #3) Went over the amendment. (27:00-33:30)

**Representative Paur:** Can the Secretary of State be able to propagate a lot of these **as rules?**

**Nick Hacker:** It has to be a statutory change.

**Representative Jones:** That is not covered by the 10 year retention. Doesn't it do that same thing?

**Nick Hacker:** Not quite. A journal is kept for all the notarizations that they do.

**Representative Jones:** I thought audio visual recording remote would be kept for any bodys access through the Secretary of State's Office.

**Nick Hacker:** No, that could be a lot of data to keep at the Secretary of State.

**Rep. Magrum:** Is there an additional cost to the counties?

**Nick Hacker:** We already record our documents electronically now with 99% of them. Most counties don't have enough volume. They would have some costs. This does not force them to accept electronic recordings.

**Rep. Magrum:** Will it be a burden to the counties?

**Nick Hacker:** There is no mandate to the counties.

**Rep. McWilliams:** Section 5. 4 how does this apply if the journal kept on line. Should the amendment read if you lose access to the journal should they report it?

**Nick Hacker:** If the electronic document is lost, you report it to the Secretary of State and you no longer have control of your journal.

**Representative McWilliams:** Is the journal kept on the computer or is it kept remotely with login access?

**Nick Hacker:** Generally they are kept remotely with online access.

**Tony Weiler, Executive Director of the State Bar Association:** We support this uniform act.

**Chairman K. Koppelman:** You are just making them fit the uniform code.

**Representative Klemin:** This does affect some of the North Dakota statutes.

**Al Jaegar:** In 2011 when we passed this law and Representative Klemin worked with us and it complies in North Dakota.

**Parrel Grossman, Director of the Attorney Generals Concern & Protection Division**: Supports the bill.

Opposition: None
Closed

**Rep. Rick Becker:** Would the language be must or shall on page 6?

**Chairman K. Koppelman:** Legislative Council can replace it if need be.

Motion made by **Representative Becker** to accept the amendments proposed by Mr. Hacker with the understanding that Legislative Council has that opportunity. Motion seconded by **Representative Satrom.**

**Representative McWilliams:** Add to the amendment that if the journal is lost or stolen or lost access to it, it should be a little more specific about a digital copy.

**Chairman K. Koppelman:** We have a motion on the floor. Any further discussion on that motion? Seeing none, all in favor of the motion to amend signify by saying aye. Motion Carries.

**Representative McWilliams:** Section 5 #4 is lost or stolen, adding or lost access to it.

Motion by **Representative McWilliams** and seconded by **Representative Becker.**

Additional amendment by **Representative McWilliams** was passed by voice vote.

**Chairman K. Koppelman:** Motion for Do Pass as twice amended for HB1110.

Moved by **Representative Satrom** and seconded by **Representative Hanson.**

Roll Call Vote Yes 13 No 0 Absent 1

Do Pass carries. **Representative Karls** is the Carrier.

Hearing Closed.

Offered by North Dakota Guaranty & Title
Nick Hacker (240) 688-2210

**PROPOSED AMENDMENT TO HB NO. 1110**

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "44-06.1-13.1" insert "and a new section to chapter 44-06.1"

Page 1, line 3, after "sections" insert "11-18-15,"

Page 1, line 3, after "44-06.1-03" remove "and"

Page 1, line 3, after "44-06.1-18" insert ", and "47-19-26"

Page 1, after line 5, insert:

"**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:

1. ~~in~~ In either a stamped or an imprinted form; or
2. An official stamp under chapter 44-06.1."

Page 3, line 9, after "record." insert "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."

Page 4, line 10, after "44-06.1-06" replace "of" with "or"

Page 6, line 29, after "recorder" replace "may" with "must"

Page 7, after line 2, insert:

"**SECTION 5.** A new section to chapter 44-06.1 of the North Dakota Century Code is created and enacted as follows:

**Journal.**

1. A notary public shall maintain a journal in which the notary public chronicles all notarial acts that 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 the 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 any identification credential; and
   f. The fee, if any, charged by the notary public.
4. If a notary public's journal is lost or stolen, the notary public promptly shall notify the secretary of state on discovering that the journal is lost or stolen.
5. On resignation from, or the revocation or suspension of, a notary public's commission, the notary public shall retain the notary public's journal in accordance with subsection 1 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. On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian must retain the journal as provided in subsections 1 and 5 or transmit it to a repository approved by the secretary of state."

Page 7, after line 2, insert:

"**SECTION 6. AMENDMENT.** Section 47-19-26 of the North Dakota Century Code is amended and reenacted as follows:

**47-19-26. Certificate of acknowledgement - Forms.**

An officer taking an acknowledgment of an instrument within this state must endorse thereon or attach thereto 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."

Renumber accordingly

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19.0254.02001
Title.03000

Adopted by the Judiciary Committee

January 9, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1110

Page 1, line 1, after "44-06.1-13.1" insert "and a new section to chapter 44-06.1"

Page 1, line 3, after "sections" insert "11-18-15,"

Page 1, line 3, remove "and"

Page 1, line 3, after "44-06.1-18" insert ", and 47-19-26"

Page 1, after line 5, insert:

"**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."

Page 3, line 9, after the underscored period insert "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."

Page 4, line 10, replace the second "of" with "or"

Page 6, line 29, replace "may" with "shall"

Page 7, after line 2, insert:

"**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.

CA
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1/9/19
HB 1110

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."

Renumber accordingly

Date: 1-9-19
Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE**
**ROLL CALL VOTES**
**BILL/RESOLUTION NO.** HB 1110

House **Judiciary** Committee

☐ Subcommittee

Amendment LC# or Description: Hacker Amend

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Becker Seconded By Rep. Satrom

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Chairman Koppelman | | | Rep. Buffalo | | |
| Vice Chairman Karls | | | Rep. Karla Rose Hanson | | |
| Rep. Becker | | | | | |
| Rep. Terry Jones | | | | | |
| Rep. Magrum | | | | | |
| Rep. McWilliams | | | | | |
| Rep. B. Paulson | | | | | |
| Rep. Paur | | | | | |
| Rep. Roers Jones | | | | | |
| Rep. Satrom | | | | | |
| Rep. Simons | | | | | |
| Rep. Vetter | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice vote carried

Date: 1-9-19
Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE**
**ROLL CALL VOTES**
**BILL/RESOLUTION NO.** HB 1110

House **Judiciary** Committee

☐ Subcommittee

Amendment LC# or Description: Further Amend, Sub 4, Sec 5, Pg 2, line 4 Adding words lost, stolen

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. McWilliams Seconded By Rep Becker

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Chairman Koppelman | | | Rep. Buffalo | | |
| Vice Chairman Karls | | | Rep. Karla Rose Hanson | | |
| Rep. Becker | | | | | |
| Rep. Terry Jones | | | | | |
| Rep. Magrum | | | | | |
| Rep. McWilliams | | | | | |
| Rep. B. Paulson | | | | | |
| Rep. Paur | | | | | |
| Rep. Roers Jones | | | | | |
| Rep. Satrom | | | | | |
| Rep. Simons | | | | | |
| Rep. Vetter | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote carried

Date: 1-9-19
Roll Call Vote #: 3

**2019 HOUSE STANDING COMMITTEE**
**ROLL CALL VOTES** HB
**~~BILL/RESOLUTION NO.~~** 1110

House **Judiciary** Committee

☐ Subcommittee

Amendment LC# or Description: 19.0254.02001

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Satrom Seconded By Rep. Hanson

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Chairman Koppelman | ✓ | | Rep. Buffalo | ✓ | |
| Vice Chairman Karls | ✓ | | Rep. Karla Rose Hanson | ✓ | |
| Rep. Becker | ✓ | | | | |
| Rep. Terry Jones | ✓ | | | | |
| Rep. Magrum | ✓ | | | | |
| Rep. McWilliams | ✓ | | | | |
| Rep. B. Paulson | ✓ | | | | |
| Rep. Paur | ✓ | | | | |
| Rep. Roers Jones | — | | | | |
| Rep. Satrom | ✓ | | | | |
| Rep. Simons | ✓ | | | | |
| Rep. Vetter | ✓ | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 13 No 0

Absent 1 Ab.

Floor Assignment Rep. Karls

If the vote is on an amendment, briefly indicate intent:

## REPORT OF STANDING COMMITTEE

**HB 1110: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1110 was placed on the Sixth order on the calendar.

Page 1, line 1, after "44-06.1-13.1" insert "and a new section to chapter 44-06.1"

Page 1, line 3, after "sections" insert "11-18-15,"

Page 1, line 3, remove "and"

Page 1, line 3, after "44-06.1-18" insert ", and 47-19-26"

Page 1, after line 5, insert:

"**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."

Page 3, line 9, after the underscored period insert "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."

Page 4, line 10, replace the second "of" with "or"

Page 6, line 29, replace "may" with "shall"

Page 7, after line 2, insert:

"**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."

Renumber accordingly

**2019 SENATE JUDICIARY COMMITTEE**

**HB 1110**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**
Fort Lincoln Room, State Capitol

HB 1110
2/12/2019
#32582 (38:57)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

**Explanation or reason for introduction of bill/resolution:**

A BILL for 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.

**Minutes:** 2 Attachments

**Chair Larson** opens the hearing on HB 1110.

**Lawrence R. Klemin, District 47 Representative and Chairman of the ND Commission on Uniform State Laws, testifies in favor (see attachment #1)**

**Senator Bakke**: Do they have to keep the journal for the same 10 years as the recordings?
**Representative Klemin**: Yes. That's noted on page 7, line 17.

**(12:35) Al Jaeger, Secretary of State, testifies in favor**

**Jaeger**: When ND adopted the uniform upgrade in 2011, it was the first state to adopt it. Representative Klemin was actually on the committee that worked on the uniform aspects of it. The chair of the committee is actually a former professor of law at UND, so there is quite a bit of history in terms of background. The commonwealth of Virginia was the first state that started this remote notarization. It's been going for 7 years now, and most likely it's happened in ND. With them starting it in Virginia, there were concerns within my group of National Association of Secretaries of State (NASS) about it because of the traditional being present aspect.

We have a group under our umbrella of NASS called "Notary Public Administrators". I am privileged to have been one of the secretaries 20 years ago that helped start it because there was no organization that existed for notary public administrators; there were organizations that catered to notaries, but not administrators. We already have legislation for electronic notarization, and we've been waiting to implement that until our new software would be up. This also pertains to rules, so in both cases, we need the rules adopted before either one of these electronic or remote notarization goes into effect. Even though there will be an effective date of the bill, there will be a delay in terms of going through the

administrative rules process to finalize the overall use of both electronic notarization, which we already have, and remote notarization.

The notary public administrators have guidelines with electronic and remote notarization, and I suspect that we will be following those rather closely in terms of how we adopt our rules. My concern is that there are other states that have jumped on the bandwagon after Virginia. It's a little helter-skelter now, and I felt it is much better that ND adopts the uniform law so it brings consistency. We felt it was important to not wait another biennium but instead get the uniform law in place. Our office supports this bill. It's a movement that is taking place, and I think we would be better off if we were in control of how it might be done here.

**Vice Chairman Dwyer**: How does the electronic notarization work?
**Jaeger**: It's a different process because it's a transfer in a different manner where the people are in a sense present, but the document and some different things might be conveyed electronically.

**Vice Chairman Dwyer**: They have to be present?
**Jaeger**: Correct. The remote is actually videotaped. That's one of the concerns that my colleagues have had. This concern came up about yes, it's being videotaped, but do you know if everything is on the up and up? We found that probably because of the type of identification requirements, it might actually be more secure than personal where sometimes notaries on a personal level may not follow the law in terms of asking for identification and stuff like that. I think most of those concerns have been addressed. I suppose like with anything else, there can be some coercion, but I suspect that that can actually happen today in our normal situation.

**Senator Bakke**: When you go into a notary republic, you walk out with a document that has a seal and signature on it. When you do this electronically, do they produce a document for you? What do you get to prove that it's been notarized?
**Jaeger**: I don't know all of the details like that. It does allow for documents to be recorded. I would suspect that a copy is given to whomever. Overseas is a big thing because apparently, if you go to an embassy, they charge quite a bit for those type of things.

**(21:35) Nick Hacker, President/CEO of ND Guaranty and Title Co, testifies in favor (see attachment #2)**

**(30:30) Hacker:** To address Senator Bakke's concern, generally when we conduct an electronic signing of a document today, when we get done with that document it is prescribed out to the user. We often offer to print their mortgage package from your real estate closing if they would like. Most people opt for us to give it to them electronically. In fact, the way the industry is working, we're now storing that for that consumer for a long period of time; if they ever needed it, they can come back to us.

**Vice Chairman Dwyer**: Please explain the House amendments further.

**Hacker**: The first amendment is on page 1 line 12. This is where the official stamp is prescribed under chapter 44. This clarifies that the county recorder can accept an electronic stamp versus a stamp.

The other change is on page 3 under section 3 lines 17 and 18. After electronic record, we asked to ensure that the prohibition under this subsection b of 7 does not apply to a tangible copy certified under this subsection. This is to ensure the notary is not violating section 44-06.1-23 which is a prohibited act under the commission of a notary; it clarifies they're not violating that prohibited act by using an electronic notary.
The notary journal requirement was the largest portion of the bill that was amended. That's following national language used in the model acts that wasn't included in the uniform law commission version here. It's so that we have evidence in cases of fraud or impeached use, someone stealing and using someone else's notary.
Section 7 was a new section added in the House. This is enabling language in the real property section of the code that allows the notary acknowledgement block to be used on real property conveyance documents.
The other amendment that we made was under section 5 lines 8 through 11 that the recorder shall accept the recording of a tangible copy certified by that notary. Right now they're down to just one county not accepting electronic notary. We didn't want to force them into it; some very low recording jurisdictions adopting the technology needed to record an electronic document can be a challenge. If we're not able to submit the electronic document to the county recorder, we could print it certified as the notary and hand-deliver it to them and the county recorder will record that. We visited with the county recorders on that provision and they were fine with it. It's exciting that we're down to one county that doesn't accept electronic recordings, which in real property business is significant. Other states like Minnesota aren't near the utilization that we are here in North Dakota, so that's something we should be proud of.

**Vice Chairman Dwyer**: The 10 states that have adopted this, do they make individual amendments to fit their circumstances?

**Hacker**: They absolutely do. Unfortunately within a few of those states, they were too far ahead of the curve and don't have a uniform act. They'll probably be revisiting their statutes again when they figure out that it's not working. We're a title insurance agent and write title insurance for a much larger company, an underwriter. There are states that don't allow us to do remote electronic notarizations because the statutes weren't drafted correctly in a way that would be useable. However, every other state that's taking the uniform law commission version is making those tweaks and nuances with other parts of their Century Code to make sure it works for real property and it's not in violation of other sections in code.

**(37:10) Tony Weiler, Exec. Director of the State Bar Association, testifies in favor**

**Weiler**: The state bar association has a history for supporting uniform laws for a few reasons. First is the process that goes into drafting these and how it's looked at by legislators, lawyers and law professors. Second it's generally not very controversial stuff, and we tend to stay out of anything controversial by constitution. Third our legislature still gets a chance to take a look at these uniform laws and if they don't fit ND the way we'd like, then you get to make those changes. We support this and encourage a do pass for all the reasons that you heard from the previous speakers.

**Chair Larson closes the hearing on HB 1110.**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**
Fort Lincoln Room, State Capitol

HB 1110
2/12/2019
#32587 (00:48)
#32689 (00:08)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

**Explanation or reason for introduction of bill/resolution:**

A BILL for 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.

**Minutes:** No Attachments

**Chair Larson** begins discussion on HB 1110. Senator Myrdal was absent.

**Senator Luick:** Motions for a Do Pass.
**Senator Bakke:** Seconds.

**A Roll Call Vote was Taken: 5 yeas, 0 nays, 1 absent. Motion carries.**

**Senator Bakke** will carry the bill.

**Chair Larson:** We will hold the vote open so Senator Myrdal can vote.

**Chair Larson** ends the discussion on HB 1110.

(Job #32689 on 2/13/19) **Senator Myrdal** votes yes. Unanimous vote is recorded.

Date:2/12/2019
2/13/2019
Roll Call Vote: 1

**2019 SENATE STANDING COMMITTEE**
**ROLL CALL VOTES**
**BILL/RESOLUTION NO. 1110**

Senate **Judiciary** Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Luick Seconded By Senator Bakke

| Senators | Yes | No | Senators | Yes | No |
|---|---|---|---|---|---|
| Chair Larson | X | | Senator Bakke | X | |
| Vice Chair Dwyer | X | | | | |
| Senator Luick | X | | | | |
| Senator Myrdal | X | | | | |
| Senator Osland | X | | | | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Bakke

If the vote is on an amendment, briefly indicate intent:

## REPORT OF STANDING COMMITTEE

**HB 1110, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1110 was placed on the Fourteenth order on the calendar.

**2019 TESTIMONY**

**HB 1110**

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# NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

**Representative Lawrence R. Klemin**
District 47
3929 Valley Drive
Bismarck, ND 58503-1729
R: 701-222-2577
*lklemin@nd.gov*

**Speaker of the House**

**TESTIMONY OF REP. LAWRENCE R. KLEMIN**
**HOUSE JUDICIARY COMMITTEE**
**HOUSE BILL NO. 1110**
**JANUARY 9, 2019**

Mr. Chairman and members of the House Judiciary Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am also the Chairman of the North Dakota Commission on Uniform State Laws and have been appointed to represent the House on the National Uniform Law Commission.

The Uniform Law Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws, established in 1892, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical. North Dakota has been a member of the ULC since 1893 and has enacted 86 uniform laws, many of which have been revised over the years to keep up with changing times and technology.

The Revised Uniform Law on Notarial Acts (RULONA) is one such act. North Dakota had enacted the uniform law many years ago and in 2011 enacted the revised law as Chapter 44-06.1 of the North Dakota Century Code. The revised law was promulgated in 2010 and I was a member of the ULC committee that worked for several years to draft RULONA.

House Bill 1110 is an amendment to the law we enacted in 2011 and is intended to create new law to authorize remote notarizations through the use of an emerging technology. 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).

RULONA (2018) 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. RULONA (2018) authorizes remote notarization without geographic limits on the location of the signer.

RULONA (2018) updates RULONA (2010) 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 RULONA Section 6 calling for appearance before a notary public.

- Define communication technology as any means or process that allows a notary public and a remotely located individual to communicate with each other simultaneously. Specific technology is not identified in the amendment.

- Specify the means by which a notary public must identify a remotely located individual. 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. 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.

- 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.

- Provide that the commissioning officer may adopt rules regarding the performance of notarial acts for remotely located individuals.

RULONA (2018) 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.

Section 1 of House Bill 1110 amends the definitions section to include the definition of "person", which is a standard definition used throughout the North Dakota Century Code.

Section 2 of the bill provides the authority for a notarial officer to certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

Section 3 of the bill is the main part of the bill and enacts the new language on remote notarizations. Please note that under this new law, the Secretary of State is authorized to adopt rules for standards relating to remote notarizations and the communications technology that can be used for identity proofing. This new law will not actually be used until those rules are adopted. This is enabling legislation to allow remote notarizations once the rules are in place.

Section 4 of the bill provides that a county recorder may accept and record a tangible copy of an electronic record that has been certified as accurate as satisfying requirements for only recording original documents.

The American Society of Notaries has formally endorsed the 2018 update to RULONA. A copy of the endorsement is attached to my testimony.

I encourage you to recommend approval of House Bill 1110. I would be happy to answer any questions that you may have.

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AMERICAN SOCIETY OF
NOTARIES

November 19, 2018

Anita Ramasastry, President
Uniform Law Commission
111 N. Wabash Avenue, Suite 1010
Chicago, IL 60602

RE: ASN Support – Revised Uniform Law on Notarial Acts (2018)

Dear Ms. Ramasastry,

American Society of Notaries, a professional organization serving Notaries Public since 1965, congratulates the Uniform Law Commission on its thoughtfully composed 2018 update to the Revised Uniform Law on Notarial Acts (RULONA).

Our Society, an Observer to the RULONA's drafting and subsequent revisions, has long supported widespread adoption of the Act for these reasons.

Scope. The RULONA provides a legal framework addressing every area of notarial law—qualifications to obtain a Notary commission, authority to perform notarial acts, specified duties, notarial act requirements, identification of principals, notarial certificates, official stamp and stamping device, recordkeeping, prohibited acts, and more. In states where notary provisions are scattered among multiple areas of law, enacting RULONA will provide statutory cohesiveness and clarity.

Unified Treatment of Tangible and Electronic Records. The RULONA marries notarization's traditions with present-day demands by defining paper-based (tangible) and electronic documents as "records," authorizing a notarial officer to notarize "records," and applying notarial act requirements equally to notarization of tangible and electronic records.

Uniformity Among States. Consider the Act's provisions establishing the requirements for performance of each notarial act, the information elements in an official stamp and the form of a notarial certificate. Uniformity in these areas promotes the acceptance of notarial acts across jurisdictional borders and strengthens relying parties' confidence in the integrity of a notarial act, wherever it is performed.

Standards of Practice. The RULONA establishes baseline standards in core areas of notarial law and practice, thus enhancing the office's professionalism and strengthening the assurances provided by notarial acts. The Act supports adherence to these standards by empowering notarial officers to refuse to perform a notarial act, unless refusal is prohibited by other law. The Act is a guide to the most essential and desirable provisions of notarial law and best practices, especially for states moving in new directions such as authorizing the performance of notarial acts using communications technology and related technological tools.

Proven Interstate Recognition Provisions. The RULONA provides for the enacting state's legal recognition of a notarial act performed in another jurisdiction. These provisions support the free exchange of records between jurisdictions by assuring that variations in state Notary laws do not impair recognition of a lawfully performed notarial act. Such language has appeared in multiple Uniform Law Commission Acts for decades, largely unchanged because it is so clear and effective.

Stakeholder Participation. The RULONA's drafting process was expertly managed and relentlessly inclusive. All stakeholder input received thoughtful consideration. The resulting Act reflects, and is responsive to, the needs of the many stakeholders who participated in the drafting process and who rely on the assurances a notarial act provides.

American Society of Notaries recommends adoption of the RULONA and commends all Drafting Committee members—especially Patricia Brumfield Fry, Raymond Pepe and Reporter Arthur Gaudio—for their exemplary work.

Sincerely,

Kathleen Butler

Kathleen Butler
Executive Director
American Society of Notaries

KB/me

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**House Judiciary Hearing on H.B. 1110**

Testimony from North Dakota Guaranty and Title Co
Nick Hacker - President/CEO
nick@thetitleteam.com
(240) 688-2210

Remote notarization will benefit consumers by its convenience and provide security for the notarial process. H.B. 1110 incorporates the best thinking across the country on how to enact remote notary legislation in a secure manner.

***1. Using a nationally vetted model***

H.B. 1110 would enact RULONA 2018, building on our state's earlier adoption of the Revised Uniform Law on Notarial Acts in 2011. RULONA 2018 is a nationally vetted model consistent with other national models and standards developed by both private industry participants and public officials.

- Title and Mortgage Industry Participation: RULONA 2018 was developed with intense involvement of the title and mortgage industries. It is **consistent with our own industry model law**, the Model Legislation for Remote Online Notarization adopted jointly by the Mortgage Bankers Association (MBA) and American Land Title Association (ALTA).
- Foundation for NASS Standards: RULONA 2018 provides a legal framework **consistent with** the National Association of Secretary of States **(NASS) Remote eNotary Standards**, adopted in February of 2018.

***2. A consumer-friendly choice***

Remote notarization is the consumer-friendly alternative to the difficult and time-consuming process of finding a traditional notary for an in-person notarization.

- Ease of Access: North Dakota residents can **get documents notarized *anywhere*, *anytime***.
- Save on Time, Lost Wages and Travel Costs: Remote notarization eliminates the need to **make appointments**, **take leave from work**, or **drive for miles** to find a notary—all you need is a computer and an internet connection.
- Good for Veterans and the Disadvantaged: It benefits members of the military on deployment and other North Dakotans out of state, and is **especially useful to rural, disadvantaged, or immobilized residents** who need to notarize official documents.
- Economical and Efficient: Remote online notarization can **reduce transaction costs to consumers** by allowing businesses to move to efficient electronic alternatives to paper documents.
- Consumer Choice: Remote online notarization will be **strictly optional** and preserve consumer choice. It will simply be an alternative for North Dakota residents who wish to use it.

***3. The secure option***

With increasing fraud and other scams hitting both North Dakota's residents and its business community, remote notarization is a secure option that uses the latest technologies to address fraud prevention.

- Enhanced Identification Requirements: With **enhanced ID requirements** and using a multi-factor approach to authenticate signers, remote notarization leverages the latest technologies and forensic tools to stop fraud before it happens.
- Robust Audit Trail: With a **secure electronic journal entry** (*which should be added via amendment*) and **audio-video recording** made of each notarization, there will be an auditable record to deter potential fraudsters. Criminals will be much less likely to steal someone's identity when the camera is rolling.
- Secure Technologies: Remote notarization includes the latest **tamper-evident technologies** so that third parties can detect whether someone has tried to alter an electronically notarized document.

### 4. *Protecting North Dakota notaries*

A remote notarization law will be of great benefit to North Dakota's notaries by expanding to them new choices and options for their notarial practice.

- Protect Notary Security: A notary's **physical safety**—which may be threatened when notaries are frequently asked to travel to remote locations to notarize documents—will become protected. A notary only needs to click "End Session" whenever events become threatening or suspicious.
- Minimal Hardware Required: Any notary with a **computer and internet connection** will have all the tools necessary to succeed.
- Protect the Role of Notaries: Remote notarization relies on **tried and tested practices and technologies** and will cement the role of North Dakota notaries in digital commerce.

### 5. *A national trend at 36 states and counting…*

Because the internet knows no borders, tens of thousands of remote notarizations are already happening each year across the country and in every state—including ours. Today, North Dakota residents are going online to use to the services of remote notaries in *other* states, instead of being able to use North Dakota notaries operating under North Dakota law. Our notaries should be given the **tools to compete** on a level playing field.

- 10 States Have Enacted Remote Notary Laws: IN, MI, MN, MT, NV, OH, TN, TX, VA and VT.
- At Least 26 Other States Are Considering Remote Notarization: Bills are likely to be filed in 2019 or 2020 in AK, AL, AZ, CA, CO, FL, GA, HI, IA, ID, IL, KS, KY, LA, MO, MS, NE, NJ, OK, OR, PA, SC, SD, UT, WA and WI.
- Majority of the U.S.: If every state above passes a remote notary bill, that will be **72% of all states** representing more than **85% of the U.S. population**.

### 6. ***Minor Amendments***

H.B. 1110 should be amended for a few minor corrections and additions:

- Recording Certified Copies: A core feature of RULONA 2018 is a process that enables certified copies of electronic documents to be recorded in counties that currently lack e-recording capabilities. However, there is an inconsistency between Section 2 of the bill and current law in NDCC 44-06.1-23(7)(b) that needs to be addressed.
- Add a Journal Requirement: Because hand-written signatures are not possible on electronic documents, a notary's journal provides a valuable piece of evidence of who actually signed in the case of a later legal dispute. RULONA's journal provision should be added so that any notary who performed a remote notarization will keep a record of each signing event.
- A Few Inconsistencies: There are a couple of inconsistencies between RULONA, as originally enacted in 2011, and other provisions relating to seals and acknowledgement forms in in NDCC 11-18-15 and NDCC 47-19-26. These oversights can now be easily corrected.

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Offered by North Dakota Guaranty & Title
Nick Hacker (240) 688-2210

**PROPOSED AMENDMENT TO HB NO. 1110**

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "44-06.1-13.1" insert "and a new section to chapter 44-06.1"

Page 1, line 3, after "sections" insert "11-18-15,"

Page 1, line 3, after "44-06.1-03" remove "and"

Page 1, line 3, after "44-06.1-18" insert ", and "47-19-26"

Page 1, after line 5, insert:

"**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:

1. ~~in~~ In either a stamped or an imprinted form; or
2. An official stamp under chapter 44-06.1."

Page 3, line 9, after "record." insert "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."

Page 4, line 10, after "44-06.1-06" replace "of" with "or"

Page 6, line 29, after "recorder" replace "may" with "must"

Page 7, after line 2, insert:

"**SECTION 5.** A new section to chapter 44-06.1 of the North Dakota Century Code is created and enacted as follows:

**Journal.**

1. A notary public shall maintain a journal in which the notary public chronicles all notarial acts that 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 the 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 any identification credential; and

f. The fee, if any, charged by the notary public.

4. If a notary public's journal is lost or stolen, the notary public promptly shall notify the secretary of state on discovering that the journal is lost or stolen.

5. On resignation from, or the revocation or suspension of, a notary public's commission, the notary public shall retain the notary public's journal in accordance with subsection 1 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. On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian must retain the journal as provided in subsections 1 and 5 or transmit it to a repository approved by the secretary of state."

Page 7, after line 2, insert:

"**SECTION 6. AMENDMENT.** Section 47-19-26 of the North Dakota Century Code is amended and reenacted as follows:

**47-19-26. Certificate of acknowledgement - Forms.**

An officer taking an acknowledgment of an instrument within this state must endorse thereon or attach thereto 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."

Renumber accordingly

**11-18-11. Recorder to record instruments.**

When an instrument affecting the title to or creating a lien upon real estate within the county is numbered and entered in the reception record and indexed, it must be recorded or filed as provided by law. The recorder shall provide recording information on the instrument as required by paragraph 4 of subdivision a of subsection 1 of section 11-18-05 and shall authenticate the information with an official signature and the official seal of the office as required by section 11-18-04.

**11-18-12. Record, when complete - Penalty for alteration.**

Repealed by S.L. 1975, ch. 106, § 673.

**11-18-13. Indexing and filing security agreements.**

The provisions of sections 11-18-09, 11-18-10, and 11-18-11 shall not extend to, nor cover the indexing and filing of, a financing statement. Such instrument shall be indexed and filed as provided in chapter 41-09.

**11-18-14. Recorder to remove and destroy certain documents - Records to be made.**

The recorder in each county in this state, unless otherwise earlier permitted by law, shall remove from the files in the recorder's office, and destroy, all chattel mortgages, agricultural processor's liens, agricultural supplier's liens, agister's liens, mechanic's liens, repairman's liens, unpaid earned insurance premium liens, and sales contracts together with any releases for the instrument upon which a claim for relief has accrued and which claim for relief is more than ten years old. At the time of destroying the files the recorder shall note on the margin of the index opposite the record of each instrument so removed and destroyed the date when the instrument was destroyed.

**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 either a stamped or an imprinted form.

**11-18-16. Buried transmission facilities - Filing notice thereof.**

Repealed by S.L. 1995, ch. 455, § 8.

**11-18-17. Establishment of a county card file system.**

Repealed by S.L. 1995, ch. 455, § 8.

**11-18-18. Request of exact location from owner of facilities - Owner to provide location information.**

Repealed by S.L. 1995, ch. 455, § 8.

**11-18-19. Injury or damage to the facility - Civil cause of action.**

Repealed by S.L. 1995, ch. 455, § 8.

**11-18-20. Card to be used in submitting information to county recorders.**

Repealed by S.L. 1995, ch. 455, § 8.

**11-18-21. Alteration of existing boundary lines by court or arbitrator - Filing of plat required.**

Within thirty days of the issuance of any judgment or final decision in a court action or arbitration proceeding which establishes a boundary for real property that deviates from the existing boundaries established by the United States public land surveys, surveys using the North Dakota coordinate system, or any other official survey depicting the boundaries of real property, a plat must be filed in the office of the recorder in the county where the property is located, containing a diagrammatic depiction of the boundary as it existed prior to the judgment or final decision, and as established by the judgment or final decision. The plat must be

h. Denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state; or
i. Failure of the notary public to maintain an assurance as provided in section 44-06.1-20.

2. If an applicant for a commission as a notary public is denied the commission or a commission is revoked or suspended, the applicant or notary public is entitled to timely notice and hearing in accordance with chapter 28-32. The notice may provide that the person may not perform any notarial acts during the pendency of the revocation proceeding. A notary whose commission is revoked may be denied a new commission for a period of up to four years following the date of revocation.
3. The authority of the secretary of state to deny, suspend, refuse to renew, or revoke a notary public's commission does not prevent the secretary of state or an aggrieved person from seeking and obtaining other remedies provided by law, whether criminal or civil.
4. A notary public who exercises the duties of a notary's office with knowledge that the notary's commission has expired or has been revoked or that the notary is disqualified otherwise or any other person who acts as a notary or performs a notarial act without a lawful notary commission is guilty of an infraction, and, if appropriate, the notary's commission must be revoked by the secretary of state using the procedure under chapter 28-32.
5. The secretary of state may impose a lesser sanction for a violation of any provision of this chapter 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. Any civil penalty collected by the secretary of state must be deposited in the secretary of state's general services operating fund.
6. 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 commission on the secretary of state's own motion.
7. 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.

**44-06.1-22. Database of notaries public.**

When the secretary of state acquires or develops the technical capability to maintain an electronic database of notaries public, the secretary of state shall maintain an electronic database of notaries public:

1. Through which an individual may verify the authority of a notary public to perform notarial acts; and
2. Which indicates whether a notary public has notified the secretary of state that the notary public will be performing notarial acts on electronic records.

**44-06.1-23. Prohibited acts.**

1. A commission as a notary public does not authorize an individual to:
   a. Assist in drafting legal records, give legal advice, or otherwise practice law;
   b. Act as an immigration consultant or an expert on immigration matters;
   c. Represent an individual in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship, or related matters; or

d. Receive compensation for performing any of the activities listed in this subsection.

2. A notary public may not engage in false or deceptive advertising.
3. A notary public, other than an attorney licensed to practice law in this state, may not use the term "notario" or "notario publico".
4. A notary public, other than an attorney licensed to practice law in this state, may not advertise or represent that the notary public may assist in drafting legal records, give legal advice, or otherwise practice law. If a notary public, who is not an attorney licensed to practice law in this state, in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media, and the internet, the notary public shall include the following statement, or an alternate statement authorized or required by the secretary of state, in the advertisement or representation, prominently and in each language used in the advertisement or representation: "I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities." If the form of advertisement or representation is not broadcast media, print media, or the internet, and does not permit the inclusion of the statement required by this subsection because of size, it must be prominently displayed or provided at the place of performance of the notarial act before the notarial act is performed.
5. Except as otherwise allowed by law, a notary public may not withhold access to or possession of any original record provided by an individual who seeks performance of a notarial act by the notary public.
6. A notary public may not notarize a signature on a document if:
   a. The document was not first signed or re-signed in the presence of the notary public, in the case of a verification on oath or affirmation, or in the case of an acknowledgment, was not acknowledged in the presence of the notary public.
   b. The name of the notary public or the spouse of the notary public appears on the document as a party or in which document either individual has a direct beneficial interest or if either individual appears as a signatory to a petition within the meaning of section 1-01-50. A notarial act performed in violation of this subdivision is voidable.
   c. The signature is that of the notary public or the spouse of the notary public.
   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.
   e. The date of the verification on oath or affirmation or acknowledgment is not the actual date the document is to be notarized or the verification on oath or affirmation or acknowledgment is undated.
   f. The signature on the document or the notarial certificate is not an original signature, except as otherwise provided by law.
   g. The notary is falsely or fraudulently signing or notarizing a document, verification on oath or affirmation, or acknowledgment or in any other way is impersonating or assuming the identity of another notary.
   h. 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. The notary did not obtain satisfactory evidence of the identity of the signer, unless the signer is personally known to the notary.
7. A notary public may not make or purport to make any copy of a vital record, a recordable instrument, or a public record containing an official seal if:
   a. The document is a copy or certified copy of any vital record authorized or required by law to be registered or filed;

b. The document is a copy or certified copy of an instrument entitled by law to be recorded; or
c. The document is a copy or certified copy of a public record containing an official seal.

8. A notary public shall affix the notary's official stamp at the time of performing each notarial act.

**44-06.1-24. Validity of notarial acts.**

Except as otherwise provided in this chapter, the failure of a notarial officer to perform the duties or meet the requirements specified in this chapter does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this chapter does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on other laws of this state or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform the act.

**44-06.1-25. Rules.**

The secretary of state may adopt rules to implement the provisions of this chapter. Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The rules may include:

1. Provisions prescribing the manner of performing notarial acts regarding tangible and electronic records.
2. Provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident.
3. Provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures.

**44-06.1-26. Notary public commission in effect.**

A commission as a notary public in effect on August 1, 2011, continues until its date of expiration. A notary public who applies to renew a notary public commission after August 1, 2011, shall comply with the provisions of this chapter. A notary public, in performing notarial acts after August 1, 2011, shall comply with the provisions of this chapter and is subject to refusal to renew the notary public's commission or revocation or suspension of the notary public's commission under this chapter.

**44-06.1-27. Name change.**

A notary who has legally changed the notary's name shall submit to the secretary of state a rider to the notary's surety bond stating both the old and new names, the effective date of the new name, and a ten dollar fee within sixty days of the name change. After notification to the secretary of state of the name change and until a commission with the notary's new name is received, the notary may continue to use the old stamping device but must sign any notarial certificate substantially as follows:

_____
Notary public North Dakota
Formerly known and commissioned as

_____
My commission expires
Notary Seal

Upon receipt of the rider and fee, the secretary of state shall issue a certificate of authorization that the notary public must use to obtain a new stamping device. The notary shall place an impression of the notary's stamp on the certificate of authorization and return the certificate of authorization to the secretary of state. After the authorization is on file, the secretary of state shall issue a commission with the notary's new name.

# CHAPTER 47-19
# RECORD TITLE

**47-19-01. Instruments entitled to record.**

Any instrument affecting the title to or possession of real property may be recorded as provided in this chapter.

**47-19-02. Instruments entitled to record without acknowledgment.**

The following instruments may be recorded without acknowledgment or further proof:

1. An instrument issued by an agency, bureau, department, or the judiciary of the United States, this state or a political subdivision of this state, or an Indian tribe recognized by the United States department of the interior. An instrument includes a contract or agreement that is entered by one of these governmental entities that contract or agreement is deemed to have been issued by the entity.
2. An instrument certified by an agency, bureau, department, or the judiciary of the United States or a foreign government, a state of the United States or a political subdivision of a state, or an Indian tribe recognized by the United States department of the interior.
3. A lis pendens or other instrument that is signed by an attorney at law licensed to practice law in this state which bears the attorney's identification number issued by the state board of law examiners.
4. An affidavit that bears a jurat or verification upon oath or affirmation.
5. A Uniform Commercial Code financing statement under title 41.
6. A plat signed by a land surveyor registered in this state.

**47-19-03. Prerequisites to recording instruments.**

Before an instrument can be recorded, unless it belongs to a class provided for in section 47-19-02 or 47-19-40, its execution must be established:

1. If executed by an individual, by acknowledgment by the person executing the same;
2. If executed by a corporation or limited liability company, by execution and acknowledgment by the person or persons authorized to execute instruments under section 47-10-05.1;
3. By proof by a subscribing witness as is provided by section 47-19-22; and
4. By proof of the handwriting of the person executing an instrument and of a subscribing witness thereto as is prescribed by sections 47-19-23 and 47-19-24 and filing of the original instrument in the proper office there to remain for public inspection.

Except as otherwise provided by the law of this state or the law of the state in which the instrument or document was executed, before an instrument may be recorded, the document and any acknowledgment must be executed with an original signature.

**47-19-03.1. Deeds and contracts for deeds to include name and address of drafter of legal description.**

The recorder may not record a deed or contract for deed containing a metes and bounds legal description which affects the title to or possession of real property that otherwise may be recorded under this chapter unless the name and address of the individual who drafted the legal description contained in the deed or contract for deed appears on the instrument in a legible manner. A deed or contract for deed complies with this section if it contains a statement substantially in the following form: "The legal description was prepared by _____ (name) _____ (address) or obtained from a previously recorded instrument." This section does not apply to any instrument executed before January 1, 2000, or any instrument executed or acknowledged outside the state. The validity and effect of the record of any instrument in a recorder's office may not be lessened or impaired by the fact the instrument does not contain the statement required by this section.

**47-19-16. Acknowledgment and proof - Without the United States - Officers qualified.**
Repealed by S.L. 1971, ch. 453, § 10.

**47-19-17. Acknowledgment and proof before commissioned officer of armed forces - Conditions.**
Repealed by S.L. 1971, ch. 453, § 10.

**47-19-17.1. Persons authorized to administer oaths and take acknowledgments.**
Repealed by S.L. 1971, ch. 453, § 10.

**47-19-17.2. Validating certain oaths and acknowledgments.**
Repealed by S.L. 1971, ch. 453, § 10.

**47-19-18. Deputies may take acknowledgments.**
When any officer mentioned in section 47-19-14 is authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of the principal as deputy, or by such deputy as deputy.

**47-19-19. Effect of recording.**
The record of any instrument shall be notice of the contents of the instrument, as it appears of record, as to all persons.

**47-19-20. Identity of person acknowledging - Proof required.**
The acknowledgment of an instrument must not be taken unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness that the person making the acknowledgment is the individual who is described in and who executed the instrument, or if executed by a corporation or limited liability company, that the officer or manager making such acknowledgment is authorized to make it as provided in section 47-10-05.1.

**47-19-21. Proof of an unacknowledged instrument - Method.**
Proof of the execution of an instrument when not acknowledged may be made:
1. By the party executing it;
2. By a subscribing witness; or
3. By other witnesses in cases mentioned in sections 47-19-23 and 47-19-24.

**47-19-22. Knowledge required by officer of subscribing witness in taking proof.**
If proof of the execution of an instrument is made by a subscribing witness, such witness must be known personally to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness or must be proved to be such by the oath of a credible witness. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, that such person executed it, and that the witness subscribed the witness's name thereto as a witness.

**47-19-23. Proof by handwriting - When received - Requirements.**
The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:
1. When the parties and all the subscribing witnesses are dead;
2. When the parties and all the subscribing witnesses are nonresidents of the state;
3. When the place of their residence is unknown to the party desiring the proof and cannot be ascertained by the exercise of due diligence;
4. When the subscribing witness is concealed, or cannot be found by the officer by the exercise of due diligence in attempting to serve a subpoena or attachment; or
5. In case of the continued failure or refusal of the witness to testify for the space of one hour after the witness's appearance.

# NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

**Representative Lawrence R. Klemin**
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**Speaker of the House**


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**TESTIMONY OF REP. LAWRENCE R. KLEMIN**
**SENATE JUDICIARY COMMITTEE**
**HOUSE BILL NO. 1110**
**FEBRUARY 12, 2019**

Madam Chairman and members of the Senate Judiciary Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am also the Chairman of the North Dakota Commission on Uniform State Laws and have been appointed to represent the House on the National Uniform Law Commission.

The Uniform Law Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws, was established in 1892 and provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands, to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical. North Dakota has been a member of the ULC since 1893 and has enacted 86 uniform laws, many of which have been revised over the years to keep up with changing times and technology.

The Revised Uniform Law on Notarial Acts (RULONA) is one such act. North Dakota had enacted the uniform law many years ago and in 2011 enacted the revised law as Chapter 44-06.1 of the North Dakota Century Code. The revised law was promulgated in 2010 and I was a member of the ULC committee that worked for several years to draft RULONA.

House Bill 1110 is an amendment to the law we enacted in 2011 and is intended to create new law to authorize remote notarizations through the use of an emerging technology. 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).

RULONA (2018) 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

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services have made it possible to perform notarial acts for persons who are not in the physical presence of a notary public. RULONA (2018) authorizes remote notarization without geographical limits on the location of the signer.

RULONA (2018) updates RULONA (2010) 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 RULONA Section 6 calling for appearance before a notary public.

• Define communication technology as any means or process that allows a notary public and a remotely located individual to communicate with each other simultaneously. Specific technology is not identified in the amendment.

• Specify the means by which a notary public must identify a remotely located individual. 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. 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.

• 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.

• Provide that the commissioning officer may adopt rules regarding the performance of notarial acts for remotely located individuals.

RULONA (2018) 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 in the real estate records.

Section 1 of House Bill 1110 amends the recording statute to refer to the "official" stamp of a notary contained in the notarial act.

Section 2 amends the definitions section to include the definition of "person", which is a standard definition used throughout the North Dakota Century Code.

Section 3 of the bill provides the authority for a notarial officer to certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

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Section 4 of the bill is the main part of the bill and enacts the new language on remote notarizations. Please note that under this new law, the Secretary of State is authorized to adopt rules for standards relating to remote notarizations and the communications technology that can be used for identity proofing. This is enabling legislation to allow remote notarizations once the rules are in place.

Section 5 of the bill provides that a county recorder may accept and record a tangible copy of an electronic record that has been certified as accurate as satisfying requirements for only recording original documents.

Section 6 requires a notary to maintain a journal to chronicle remote notarizations. A journal is not required for the standard type of notarization, but some notaries keep a journal of all notarizations.

Section 7 amends the statute relating to the certificate of acknowledgment requirement to include a cross reference to the notarial act.

The American Society of Notaries has formally endorsed the 2018 update to RULONA. A copy of the endorsement is attached to my testimony.

I encourage you to recommend approval of House Bill 1110. I would be happy to answer any questions that you may have.

Rep. Lawrence R. Klemin
Speaker of the House

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AMERICAN SOCIETY OF
NOTARIES

November 19, 2018

Anita Ramasastry, President
Uniform Law Commission
111 N. Wabash Avenue, Suite 1010
Chicago, IL 60602

RE: ASN Support – Revised Uniform Law on Notarial Acts (2018)

Dear Ms. Ramasastry,

American Society of Notaries, a professional organization serving Notaries Public since 1965, congratulates the Uniform Law Commission on its thoughtfully composed 2018 update to the Revised Uniform Law on Notarial Acts (RULONA).

Our Society, an Observer to the RULONA's drafting and subsequent revisions, has long supported widespread adoption of the Act for these reasons.

Scope. The RULONA provides a legal framework addressing every area of notarial law—qualifications to obtain a Notary commission, authority to perform notarial acts, specified duties, notarial act requirements, identification of principals, notarial certificates, official stamp and stamping device, recordkeeping, prohibited acts, and more. In states where notary provisions are scattered among multiple areas of law, enacting RULONA will provide statutory cohesiveness and clarity.

Unified Treatment of Tangible and Electronic Records. The RULONA marries notarization's traditions with present-day demands by defining paper-based (tangible) and electronic documents as "records," authorizing a notarial officer to notarize "records," and applying notarial act requirements equally to notarization of tangible and electronic records.

Uniformity Among States. Consider the Act's provisions establishing the requirements for performance of each notarial act, the information elements in an official stamp and the form of a notarial certificate. Uniformity in these areas promotes the acceptance of notarial acts across jurisdictional borders and strengthens relying parties' confidence in the integrity of a notarial act, wherever it is performed.

Standards of Practice. The RULONA establishes baseline standards in core areas of notarial law and practice, thus enhancing the office's professionalism and strengthening the assurances provided by notarial acts. The Act supports adherence to these standards by empowering notarial officers to refuse to perform a notarial act, unless refusal is prohibited by other law. The Act is a guide to the most essential and desirable provisions of notarial law and best practices, especially for states moving in new directions such as authorizing the performance of notarial acts using communications technology and related technological tools.

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Proven Interstate Recognition Provisions. The RULONA provides for the enacting state's legal recognition of a notarial act performed in another jurisdiction. These provisions support the free exchange of records between jurisdictions by assuring that variations in state Notary laws do not impair recognition of a lawfully performed notarial act. Such language has appeared in multiple Uniform Law Commission Acts for decades, largely unchanged because it is so clear and effective.

Stakeholder Participation. The RULONA's drafting process was expertly managed and relentlessly inclusive. All stakeholder input received thoughtful consideration. The resulting Act reflects, and is responsive to, the needs of the many stakeholders who participated in the drafting process and who rely on the assurances a notarial act provides.

American Society of Notaries recommends adoption of the RULONA and commends all Drafting Committee members—especially Patricia Brumfield Fry, Raymond Pepe and Reporter Arthur Gaudio—for their exemplary work.

Sincerely,

Kathleen Butler

Kathleen Butler
Executive Director
American Society of Notaries

KB/me

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**Senate Judiciary Hearing on H.B. 1110**

Testimony from North Dakota Guaranty and Title Co
Nick Hacker - President/CEO
nick@thetitleteam.com
(240) 688-2210

Remote notarization will benefit consumers by its convenience and provide security for the notarial process. H.B. 1110 incorporates the best thinking across the country on how to enact remote notary legislation in a secure manner.

### 1. *Using a nationally vetted model*

H.B. 1110 would enact RULONA 2018, building on our state's earlier adoption of the Revised Uniform Law on Notarial Acts in 2011. RULONA 2018 is a nationally vetted model consistent with other national models and standards developed by both private industry participants and public officials.

- Title and Mortgage Industry Participation: RULONA 2018 was developed with intense involvement of the title and mortgage industries. It is **consistent with our own industry model law**, the Model Legislation for Remote Online Notarization adopted jointly by the Mortgage Bankers Association (MBA) and American Land Title Association (ALTA).
- Foundation for NASS Standards: RULONA 2018 provides a legal framework **consistent with** the National Association of Secretary of States **(NASS) Remote eNotary Standards**, adopted in February of 2018.

### 2. *A consumer-friendly choice*

Remote notarization is the consumer-friendly alternative to the difficult and time-consuming process of finding a traditional notary for an in-person notarization.

- Ease of Access: North Dakota residents can **get documents notarized *anywhere*, *anytime***.
- Save on Time, Lost Wages and Travel Costs: Remote notarization eliminates the need to **make appointments**, **take leave from work**, or **drive for miles** to find a notary—all you need is a computer and an internet connection.
- Good for Veterans and the Disadvantaged: It benefits members of the military on deployment and other North Dakotans out of state, and is **especially useful to rural, disadvantaged, or immobilized residents** who need to notarize official documents.
- Economical and Efficient: Remote online notarization can **reduce transaction costs to consumers** by allowing businesses to move to efficient electronic alternatives to paper documents.
- Consumer Choice: Remote online notarization will be **strictly optional** and preserve consumer choice. It will simply be an alternative for North Dakota residents who wish to use it.

### 3. *The secure option*

With increasing fraud and other scams hitting both North Dakota's residents and its business community, remote notarization is a secure option that uses the latest technologies to address fraud prevention.

- Enhanced Identification Requirements: With **enhanced ID requirements** and using a multi-factor approach to authenticate signers, remote notarization leverages the latest technologies and forensic tools to stop fraud before it happens.
- Robust Audit Trail: With a **secure electronic journal entry** (*which should be added via amendment*) and **audio-video recording** made of each notarization, there will be an auditable record to deter potential fraudsters. Criminals will be much less likely to steal someone's identity when the camera is rolling.
- Secure Technologies: Remote notarization includes the latest **tamper-evident technologies** so that third parties can detect whether someone has tried to alter an electronically notarized document.

### 4. *Protecting North Dakota notaries*

A remote notarization law will be of great benefit to North Dakota's notaries by expanding to them new choices and options for their notarial practice.

- Protect Notary Security: A notary's **physical safety**—which may be threatened when notaries are frequently asked to travel to remote locations to notarize documents—will become protected. A notary only needs to click "End Session" whenever events become threatening or suspicious.
- Minimal Hardware Required: Any notary with a **computer and internet connection** will have all the tools necessary to succeed.
- Protect the Role of Notaries: Remote notarization relies on **tried and tested practices and technologies** and will cement the role of North Dakota notaries in digital commerce.

### 5. *A national trend at 36 states and counting...*

Because the internet knows no borders, tens of thousands of remote notarizations are already happening each year across the country and in every state—including ours. Today, North Dakota residents are going online to use to the services of remote notaries in *other* states, instead of being able to use North Dakota notaries operating under North Dakota law. Our notaries should be given the **tools to compete** on a level playing field.

- 10 States Have Enacted Remote Notary Laws: IN, MI, MN, MT, NV, OH, TN, TX, VA and VT.
- At Least 26 Other States Are Considering Remote Notarization: Bills are likely to be filed in 2019 or 2020 in AK, AL, AZ, CA, CO, FL, GA, HI, IA, ID, IL, KS, KY, LA, MO, MS, NE, NJ, OK, OR, PA, SC, SD, UT, WA and WI.
- Majority of the U.S.: If every state above passes a remote notary bill, that will be **72% of all states** representing more than **85% of the U.S. population**.