

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1083
(Judiciary Committee)
(At the request of the Commission on Uniform State Laws)

AN ACT to amend and reenact section 44-06.1-13.1 of the North Dakota Century Code, relating to the adoption of the Revised Uniform Law on Notarial Acts (2021).

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-06.1-13.1 of the North Dakota Century Code is amended and reenacted as follows:

44-06.1-13.1. Notarial Act~~act~~ performed for remotely located individual.

1. As used in this section, unless the context otherwise requires:
 - a. "Communication technology" means an electronic device or process that:
 - (1) Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and
 - (2) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.
 - b. "Foreign state" means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.
 - c. "Identity proofing" means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.
 - d. "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.
 - e. "Remotely located individual" means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection 3.
2. A remotely located individual may comply with section 44-06.1-05 by using communication technology to appear before a notary public.
3. A notary public located in this state may ~~perform a notarial act using~~use communication technology to perform a notarial act for a remotely located individual if:
 - a. The notary public:
 - (1) Has personal knowledge under subsection 1 of section 44-06.1-06 of the identity of the remotely located individual;
 - (2) Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under subsection 2 of section 44-06.1-06 or this section; or
 - (3) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

- b. The notary public is able reasonably to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;
 - c. The notary public, or a person acting on behalf of the notary public, creates an audiovisual recording of the performance of the notarial act; and
 - d. For a remotely located individual located outside the United States:
 - (1) The record:
 - (a) Is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or
 - (b) Involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and
 - (2) The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.
4. A notary public located in this state may use communication technology under subsection 3 to take an acknowledgment of a signature on a tangible record physically present before the notary public if the record is displayed to and identified by the remotely located individual during the audiovisual recording under subdivision c of subsection 3.
5. The requirement under subdivision b of subsection 3 for the performance of a notarial act with respect to a tangible record not physically present before the notary public is satisfied if:
- a. The remotely located individual:
 - (1) During the audiovisual recording under subdivision c of subsection 3, signs:
 - (a) The record; and
 - (b) A declaration, in substantially the following form, that is part of or securely attached to the record:

I declare under penalty of perjury that the record of which this declaration is a part or to which it is attached is the same record on which (name of notary public), a notary public, performed a notarial act and before whom I appeared by means of communication technology on (date).

Signature of remotely located individual

Printed name of remotely located individual; and
 - (2) Sends the record and declaration to the notary public not later than three days after the notarial act was performed; and
 - b. The notary public:
 - (1) In the audiovisual recording under subdivision c of subsection 3, records the individual signing the record and declaration; and

- (2) After receipt of the record and declaration from the individual, executes a certificate of notarial act under section 44-06.1-14 which must include a statement in substantially the following form:

I (name of notary public) witnessed, by means of communication technology, (name of remotely located individual) sign the attached record and declaration on (date).

6. A notarial act performed in compliance with subsection 5 complies with subdivision a of subsection 1 of section 44-06.1-14 and is effective on the date the remotely located individual signed the declaration under subparagraph b of paragraph 1 of subdivision a of subsection 5.
7. Subsection 5 does not preclude use of another procedure to satisfy subdivision b of subsection 3 for a notarial act performed with respect to a tangible record.
8. A notary public located in this state may use communication technology under subsection 3 to administer an oath or affirmation to a remotely located individual if, except as otherwise provided by another law of this state, the notary public:
- a. Identifies the individual under subdivision a of subsection 3;
 - b. Creates or causes the creation under subdivision c of subsection 3 of an audiovisual recording of the individual taking the oath or affirmation; and
 - c. Retains or causes the retention under subsection 11 of the recording.
9. If a notarial act is performed under this section, the certificate of notarial act required by under section 44-06.1-14 and the short-form certificate provided in under section 44-06.1-19 must indicate the notarial act was performed using communication technology.
- 5-10. A short-form certificate provided in under section 44-06.1-19 for a notarial act subject to this section is sufficient if it:
- a. Complies with the rules adopted under subdivision a of subsection 813; or
 - b. Is in the form provided in under section 44-06.1-19 and contains a statement in substantially as follows the following form: "This notarial act involved the use of communication technology."
- 6-11. A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public shall retain the audiovisual recording created under subdivision c of subsection 3 or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under subdivision d of subsection 813, the recording must be retained for a period of at least ten years after the recording is made.
- 7-12. Before a notary public performs the notary public's initial notarial act under this section, the notary public must notify the secretary of state that the notary public will be performing notarial acts with respect to remotely located individuals and identify the technologies the notary public intends to use. If the secretary of state has established standards under subsection 813 and section 44-06.1-25 for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.
- 8-13. In addition to adopting rules under section 44-06.1-25, the secretary of state may adopt rules under this section regarding performance of a notarial act under this section. The rules may:
- a. Prescribe the means of performing a notarial act involving a remotely located individual using communication technology;

- b. Establish standards for communication technology and identity proofing;
- c. Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; ~~and~~
- d. Establish standards and a period for the retention of an audiovisual recording created under subdivision c of subsection 3; and
- e. Prescribe methods for a notary public to confirm under subsections 4 and 5 the identity of a tangible record.

9-14. Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the secretary of state shall consider:

- a. The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the national association of secretaries of state;
- b. Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and
- c. The views of governmental officials and entities and other interested persons.

40-15. By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audiovisual recording created under subdivision c of subsection 3, the provider of the communication technology, identity proofing, or storage appoints the secretary of state as the provider's agent for service of process in any civil action in this state related to the notarial act.

Dennis Johnson
Speaker of the House

Tammy Klette
President of the Senate

Buell T. Reck
Chief Clerk of the House

Sharon Meyer
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1083.

House Vote: Yeas 92 Nays 0 Absent 2

Senate Vote: Yeas 46 Nays 0 Absent 1

Buell T. Reck
Chief Clerk of the House

Received by the Governor at 9:43 AM. on March 15, 2023.

Approved at 6:47 PM. on March 15, 2023.

Doug Burgum
Governor

Filed in this office this 16th day of March, 2023,
at 10:50 o'clock A. M.

Michael Howe
Secretary of State