April 30, 2021

Sen. Anne Carney, Chair  
Rep. Thom Harnett, Chair  
Joint Standing Committee on Judiciary  
Maine State Legislature  
100 State House Station  
Augusta, ME  04333

Re:  
LD 810, An Act To Allow Remote Notarization of Documents in Limited Circumstances While Preventing Exploitation  
LD 904, An Act Concerning the Revised Uniform Law on Notarial Acts  
LD 1399 An Act To Provide for Remote Notarization

Dear Sen. Carney, Rep. Harnett, and Members of the Joint Standing Committee on Judiciary:

On behalf of the Board of Governors of the Maine State Bar Association, we write to express our support for legislation enabling the continuation, and improvement, of laws that enable remote notarization. In this regard, we speak in support of LD 904, An Act Concerning the Revised Uniform Law on Notarial Acts, and neither for nor against LD 1399, An Act To Provide for Remote Notarization and LD 810 An Act To Allow Remote Notarization of Documents in Limited Circumstances While Preventing Exploitation. In expressing support for LD 904 in particular, we recognize that the bill is a “concept draft” without specific language, and that language ultimately needs to be developed; however, our primary interest at this stage is to encourage Maine to adopt an statutory approach to remote notarization that aligns as closely as possible to the laws of other states, and we believe basing this approach on a uniform law is an advisable direction.

About us. The Maine State Bar Association is a statewide trade association chartered in 1891 by the Maine Legislature. The Association currently represents approximately 3000 attorneys in the State in both public service and private practice. The Association maintains 28 separate sections covering nearly every field of law practiced in Maine, from Administrative Law to Workers’ Compensation Law.

Current Executive Order on Remote Notarial Acts. During the COVID-19 pandemic, it became necessary to find ways to complete nearly all tasks in our professional and personal lives remotely. To this end, Governor Mills signed an Executive Order in April 2020 temporarily authorizing remote notarization (37 FY 19/20). The Governor’s EO provides a system for remote ink notarization and specifically forbids electronic notarization. Remote ink notarization means the notary public and the signatory seeking notarization are physically apart, but the transaction still requires signing physical papers that must be transmitted to the notary public. The signing and notarizing of the document cannot occur electronically under the EO. The Governor’s EO also includes other provisions that serve to limit what is authorized, for instance, both the notary and the signatory must be physically located in the State of Maine at the time of the remote notarization. Any witnesses present with the signatory must also attest to being physically located in the State of Maine.

Limitations to the Executive Order. Our Association played an important role in the development and ultimate issuance of the Governor’s Executive Order from last year, and we appreciate the Governor’s
efforts to help notarizations proceed in a remote manner during the pandemic. Remote notarization is important to probate matters, real estate matters, and a number of other commercial transactions where a signature must be attested. In practice, however, we have learned that the procedures established in the Executive Order allowed some notarizations to proceed, but we have also learned that the procedures have not been used as extensively as we had hoped due to the extensive limitations within the Order. In this respect, we are hopeful that moving in the direction of a uniform law may help remote notarizations proceed efficiently and safely.

**Remote notarization will expire in Maine if the state of emergency ends.** As noted, the ability to engage in remote notarization in Maine hinges on the continued existence of the Governor’s Executive Order. If the state of emergency ends, the Order will end 30 days later. At this point, the ability to continue remote notarizations would expire, and a legislative solution would be needed. This provides some level of urgency for the Legislature to act.

**Many other states allow remote notarization.** Currently, 30 states have adopted some form of remote or electronic notarization. Other states, like Maine, enacted temporary authorizations of remote notarization in response to the COVID-19 pandemic. Allowing remote notarization enables people to complete a wide variety of business and personal transactions without being physically present in the room with the notary. These range from simple transactions using business, motor vehicle, and government forms to complex transactions involving real property, mortgages, and financial services.

**Looking ahead.** We understand that it will take some time and discussion among key stakeholders in order to develop an effective law enabling remote notarization, one that is protective of individuals, uniform in nature, and reasonably efficacious for practitioners to use. Our Association has convened a range of stakeholders on at least one occasion this winter with regard to this issue, and we would be pleased to continue in a facilitative role going forward. In addition to legal practitioners and business associations, key stakeholders include the Maine Secretary of State along with Maine’s Registries of Deeds and Registries of Probate.

**Conclusion.** For these reasons, we urge the Committee to support LD 904, as amended in a manner that allows the continuation of remote notarial acts. We also would be supportive of carrying this issue over to the Second Regular Session to allow more time for stakeholders to develop a workable system for Maine. Once again, we are happy to provide additional information should the Committee need request it.

Sincerely,

Kelly McDonald
President, Board of Governors

cc: Angela Armstrong, Executive Director
    Rachel Okun, Chair, MSBA Legislative Committee
    James I. Cohen, Verrill Dana, LLP