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TESTIMONY IN SUPPORT OF HB 2425
Before the House Committee on Business and Labor

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Good morning Chair Barker and members of the committee. My name is Hal Scoggins. I am an attorney with Farleigh Wada Witt, outside counsel for the Northwest Credit Union Association. Our firm also represents many individual credit unions throughout Oregon, Washington, Idaho, and across the U.S. I appreciate the opportunity to talk with you today about HB 2425. I will provide some brief comments on legal aspects of the bill and will be happy to answer questions.

HB 2425 does only one thing: it authorizes the recording of documents (such as trust deeds) that were created and signed electronically. The bill has no impact on the *validity* of any document; it merely provides that if a document is signed electronically, and otherwise satisfies the requirements for recordability (including the requirement for notarization), a county recording officer may record the document.

Along with the federal ESIGN Act¹, Oregon's version of the Uniform Electronic Transactions Act ("UETA," ORS Ch. 84) already establishes the validity of electronic signatures on most types of documents, including loan documents and deeds of trust. However, varying interpretations of current Oregon law have prevented lenders and title companies from offering electronic signatures as an alternative to "wet signatures" on paper documents. Specifically, ORS 93.804 requires "original signatures" on documents submitted for recording. The statute permits electronic submission of documents, but electronic submission of documents requires a certification that the document from which the electronic image is produced contains "original signatures."

There is no definition of the term "original signatures" in the statute, but some observers have interpreted it to refer to a "wet" signature on an actual paper document. This uncertainty has prevented lenders, title companies, and others from making electronic closings available for mortgage loans in Oregon. HB 2425 resolves this uncertainty by revising ORS 93.804 to provide that a recordable

¹ 15 U.S.C. 7001 et seq.

FARLEIGH WADA WITT

“instrument” includes an “electronic record” as specified in UETA, and that the term “original signature” includes an “electronic signature” as defined in UETA.

It is logical to ask how interested parties can be confident that a recorded trust deed that was signed electronically was in fact validly signed by the borrower. All documents submitted for recording must be notarized, irrespective of whether they were created electronically or on paper. Oregon’s notary laws already permit electronic notarization: the notary’s signature can be an electronic signature. This could occur in a variety of ways. For example, the notary and the document signer can use the same computer equipment to sign and notarize the document, or the notary could observe the document signer execute the document on one computer and then electronically notarize the document using a different computer. However, the notary must be physically present with the signer of the document when it is signed in order to notarize the document, irrespective of whether it is notarized electronically or on paper. Oregon’s notary laws do not currently permit remote notarization.

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