

117TH CONGRESS
1ST SESSION

H. R. 3962

To authorize notaries public to perform, and to establish minimum standards for, electronic notarizations and remote notarizations that occur in or affect interstate commerce, to require any Federal court to recognize notarizations performed by a notarial officer of any State, to require any State to recognize notarizations performed by a notarial officer of any other State when the notarization was performed under or relates to a public Act, record, or judicial proceeding of the notarial officer's State or when the notarization occurs in or affects interstate commerce, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2021

Ms. DEAN (for herself, Mr. ARMSTRONG, Mr. DAVID SCOTT of Georgia, Mr. GOTTHEIMER, Mr. FITZPATRICK, Mr. NORCROSS, Mrs. KIM of California, Mr. TIMMONS, Mr. KUSTOFF, Mrs. AXNE, Mr. GARCÍA of Illinois, Mr. PERLMUTTER, Mrs. BEATTY, Mr. KHANNA, Mr. GOOD of Virginia, Mr. GOODEN of Texas, Mr. SWALWELL, Ms. VELÁZQUEZ, Ms. HERRERA BEUTLER, Mr. BANKS, Mr. BUDD, Ms. ESHOO, Ms. DELBENE, Mr. MOONEY, Mrs. WAGNER, Mr. BARR, Mr. STEIL, Mrs. LESKO, Mr. GONZALEZ of Ohio, Mr. RESCENTIALER, Ms. SLOTKIN, Ms. WEXTON, and Mr. GUEST) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To authorize notaries public to perform, and to establish minimum standards for, electronic notarizations and remote notarizations that occur in or affect interstate commerce, to require any Federal court to recognize

notarizations performed by a notarial officer of any State, to require any State to recognize notarizations performed by a notarial officer of any other State when the notarization was performed under or relates to a public Act, record, or judicial proceeding of the notarial officer’s State or when the notarization occurs in or affects interstate commerce, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securing and Enabling
 5 Commerce Using Remote and Electronic Notarization Act
 6 of 2021”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) **COMMUNICATION TECHNOLOGY.**—The term
 10 “communication technology”, with respect to a nota-
 11 rization, means an electronic device or process that
 12 allows the notary public performing the notarization
 13 and a remotely located individual to communicate
 14 with each other simultaneously by sight and sound
 15 during the notarization.

16 (2) **ELECTRONIC; ELECTRONIC RECORD; ELEC-**
 17 **TRONIC SIGNATURE; INFORMATION; PERSON;**
 18 **RECORD.**—The terms “electronic”, “electronic
 19 record”, “electronic signature”, “information”, “per-
 20 son”, and “record” have the meanings given those

1 terms in section 106 of the Electronic Signatures in
2 Global and National Commerce Act (15 U.S.C.
3 7006).

4 (3) LAW.—The term “law” includes any stat-
5 ute, regulation, rule, or rule of law.

6 (4) NOTARIAL OFFICER.—The term “notarial
7 officer” means—

8 (A) a notary public; or

9 (B) any other individual authorized to per-
10 form a notarization under the laws of a State
11 without a commission or appointment as a no-
12 tary public.

13 (5) NOTARIAL OFFICER’S STATE; NOTARY PUB-
14 LIC’S STATE.—The term “notarial officer’s State” or
15 “notary public’s State” means the State in which a
16 notarial officer, or a notary public, as applicable, is
17 authorized to perform a notarization.

18 (6) NOTARIZATION.—The term “notariza-
19 tion”—

20 (A) means any act that a notarial officer
21 may perform under—

22 (i) Federal law, including this Act; or

23 (ii) the laws of the notarial officer’s
24 State; and

1 (B) includes any act described in subpara-
2 graph (A) and performed by a notarial officer—

3 (i) with respect to—

4 (I) a tangible record; or

5 (II) an electronic record; and

6 (ii) for—

7 (I) an individual in the physical
8 presence of the notarial officer; or

9 (II) a remotely located individual.

10 (7) NOTARY PUBLIC.—The term “notary pub-
11 lic” means an individual commissioned or appointed
12 as a notary public to perform a notarization under
13 the laws of a State.

14 (8) PERSONAL KNOWLEDGE.—The term “per-
15 sonal knowledge”, with respect to the identity of an
16 individual, means knowledge of the identity of the
17 individual through dealings sufficient to provide rea-
18 sonable certainty that the individual has the identity
19 claimed.

20 (9) REMOTELY LOCATED INDIVIDUAL.—The
21 term “remotely located individual”, with respect to
22 a notarization, means an individual who is not in the
23 physical presence of the notarial officer performing
24 the notarization.

1 (10) REQUIREMENT.—The term “requirement”
2 includes a duty, a standard of care, and a prohibi-
3 tion.

4 (11) SIGNATURE.—The term “signature”
5 means—

6 (A) an electronic signature; or

7 (B) a tangible symbol executed or adopted
8 by a person and evidencing the present intent
9 to authenticate or adopt a record.

10 (12) SIMULTANEOUSLY.—The term “simulta-
11 neously”, with respect to a communication between
12 parties—

13 (A) means that each party communicates
14 substantially simultaneously and without unrea-
15 sonable interruption or disconnection; and

16 (B) includes any reasonably short delay
17 that is inherent in, or common with respect to,
18 the method used for the communication.

19 (13) STATE.—The term “State”—

20 (A) means—

21 (i) any State of the United States;

22 (ii) the District of Columbia;

23 (iii) the Commonwealth of Puerto
24 Rico;

1 (iv) any territory or possession of the
2 United States; and

3 (v) any federally recognized Indian
4 Tribe; and

5 (B) includes any executive, legislative, or
6 judicial agency, court, department, board, of-
7 fice, clerk, recorder, register, registrar, commis-
8 sion, authority, institution, instrumentality,
9 county, municipality, or other political subdivi-
10 sion of an entity described in any of clauses (i)
11 through (v) of subparagraph (A).

12 **SEC. 3. AUTHORIZATION TO PERFORM AND MINIMUM**
13 **STANDARDS FOR ELECTRONIC NOTARIZA-**
14 **TION.**

15 (a) **AUTHORIZATION.**—Unless prohibited under sec-
16 tion 10, and subject to subsection (b), a notary public may
17 perform a notarization that occurs in or affects interstate
18 commerce with respect to an electronic record.

19 (b) **REQUIREMENTS OF ELECTRONIC NOTARIZA-**
20 **TION.**—If a notary public performs a notarization under
21 subsection (a), the following requirements shall apply with
22 respect to the notarization:

23 (1) The electronic signature of the notary pub-
24 lic, and all other information required to be included

1 under other applicable law, shall be attached to or
2 logically associated with the electronic record.

3 (2) The electronic signature and other informa-
4 tion described in paragraph (1) shall be bound to
5 the electronic record in a manner that renders any
6 subsequent change or modification to the electronic
7 record evident.

8 **SEC. 4. AUTHORIZATION TO PERFORM AND MINIMUM**
9 **STANDARDS FOR REMOTE NOTARIZATION.**

10 (a) **AUTHORIZATION.**—Unless prohibited under sec-
11 tion 10, and subject to subsection (b), a notary public may
12 perform a notarization that occurs in or affects interstate
13 commerce for a remotely located individual.

14 (b) **REQUIREMENTS OF REMOTE NOTARIZATION.**—If
15 a notary public performs a notarization under subsection
16 (a), the following requirements shall apply with respect to
17 the notarization:

18 (1) The remotely located individual shall appear
19 personally before the notary public at the time of the
20 notarization by using communication technology.

21 (2) The notary public shall—

22 (A) reasonably identify the remotely lo-
23 cated individual—

1 (i) through personal knowledge of the
2 identity of the remotely located individual;

3 or

4 (ii) by obtaining satisfactory evidence
5 of the identity of the remotely located indi-
6 vidual by—

7 (I) using not fewer than 2 dis-
8 tinct types of processes or services
9 through which a third person provides
10 a means to verify the identity of the
11 remotely located individual through a
12 review of public or private data
13 sources; or

14 (II) oath or affirmation of a
15 credible witness who—

16 (aa)(AA) is in the physical
17 presence of the notary public or
18 the remotely located individual;
19 or

20 (BB) appears personally be-
21 fore the notary public and the re-
22 motely located individual by
23 using communication technology;

1 (bb) has personal knowledge
2 of the identity of the remotely lo-
3 cated individual; and

4 (cc) has been identified by
5 the notary public under clause (i)
6 or subclause (I) of this clause;

7 (B) either directly or through an agent—

8 (i) create an audio and visual record-
9 ing of the performance of the notarization;
10 and

11 (ii) notwithstanding any resignation
12 from, or revocation, suspension, or termi-
13 nation of, the notary public's commission
14 or appointment, retain the recording cre-
15 ated under clause (i) as a notarial
16 record—

17 (I) for a period of not less
18 than—

19 (aa) if an applicable law of
20 the notary public's State specifies
21 a period of retention, the greater
22 of—

23 (AA) that specified pe-
24 riod; or

1 (BB) 5 years after the
2 date on which the recording
3 is created; or

4 (bb) if no applicable law of
5 the notary public's State specifies
6 a period of retention, 10 years
7 after the date on which the re-
8 cording is created; and

9 (II) if any applicable law of the
10 notary public's State govern the con-
11 tent, manner or place of retention, se-
12 curity, use, effect, or disclosure of
13 such recording or any information
14 contained in the recording, in accord-
15 ance with those laws; and

16 (C) if the notarization is performed with
17 respect to a tangible or electronic record, take
18 reasonable steps to confirm that the record be-
19 fore the notary public is the same record with
20 respect to which the remotely located individual
21 made a statement or on which the individual ex-
22 ecuted a signature.

23 (3) If a guardian, conservator, executor, per-
24 sonal representative, administrator, or similar fidu-
25 ciary or successor is appointed for or on behalf of

1 a notary public or a deceased notary public under
2 applicable law, that person shall retain the recording
3 under paragraph (2)(B)(ii), unless—

4 (A) another person is obligated to retain
5 the recording under applicable law of the notary
6 public's State; or

7 (B)(i) under applicable law of the notary
8 public's State, that person may transmit the re-
9 cording to an office, archive, or repository ap-
10 proved or designated by the State; and

11 (ii) that person transmits the recording to
12 the office, archive, or repository described in
13 clause (i) in accordance with applicable law of
14 the notary public's State.

15 (4) If the remotely located individual is phys-
16 ically located outside the geographic boundaries of a
17 State, or is otherwise physically located in a location
18 that is not subject to the jurisdiction of the United
19 States, at the time of the notarization—

20 (A) the record shall—

21 (i) be intended for filing with, or re-
22 late to a matter before, a court, govern-
23 mental entity, public official, or other enti-
24 ty that is subject to the jurisdiction of the
25 United States; or

1 (ii) involve property located in the ter-
2 ritorial jurisdiction of the United States or
3 a transaction substantially connected to
4 the United States; and

5 (B) the act of making the statement or
6 signing the record may not be prohibited by a
7 law of the jurisdiction in which the individual is
8 physically located.

9 (c) PERSONAL APPEARANCE SATISFIED.—If a State
10 or Federal law requires an individual to appear personally
11 before or be in the physical presence of a notary public
12 at the time of a notarization, that requirement shall be
13 considered to be satisfied if—

14 (1) the individual—

15 (A) is a remotely located individual; and

16 (B) appears personally before the notary
17 public at the time of the notarization by using
18 communication technology; and

19 (2)(A) the notarization was performed under or
20 relates to a public act, record, or judicial proceeding
21 of the notary public's State; or

22 (B) the notarization occurs in or affects inter-
23 state commerce.

1 **SEC. 5. RECOGNITION OF NOTARIZATIONS IN FEDERAL**
2 **COURT.**

3 (a) RECOGNITION OF VALIDITY.—Each court of the
4 United States shall recognize as valid under the State or
5 Federal law applicable in a judicial proceeding before the
6 court any notarization performed by a notarial officer of
7 any State if the notarization is valid under the laws of
8 the notarial officer’s State or under this Act.

9 (b) LEGAL EFFECT OF RECOGNIZED NOTARIZA-
10 TION.—A notarization recognized under subsection (a)
11 shall have the same effect under the State or Federal law
12 applicable in the applicable judicial proceeding as if that
13 notarization was validly performed—

14 (1)(A) by a notarial officer of the State, the law
15 of which is applicable in the proceeding; or

16 (B) under this Act or other Federal law; and

17 (2) without regard to whether the notarization
18 was performed—

19 (A) with respect to—

20 (i) a tangible record; or

21 (ii) an electronic record; or

22 (B) for—

23 (i) an individual in the physical pres-
24 ence of the notarial officer; or

25 (ii) a remotely located individual.

1 (c) PRESUMPTION OF GENUINENESS.—In a deter-
2 mination of the validity of a notarization for the purposes
3 of subsection (a), the signature and title of an individual
4 performing the notarization shall be prima facie evidence
5 in any court of the United States that the signature of
6 the individual is genuine and that the individual holds the
7 designated title.

8 (d) CONCLUSIVE EVIDENCE OF AUTHORITY.—In a
9 determination of the validity of a notarization for the pur-
10 poses of subsection (a), the signature and title of the fol-
11 lowing notarial officers of a State shall conclusively estab-
12 lish the authority of the officer to perform the notari-
13 zation:

14 (1) A notary public of that State.

15 (2) A judge, clerk, or deputy clerk of a court
16 of that State.

17 **SEC. 6. RECOGNITION BY STATE OF NOTARIZATIONS PER-**
18 **FORMED UNDER AUTHORITY OF ANOTHER**
19 **STATE.**

20 (a) RECOGNITION OF VALIDITY.—Each State shall
21 recognize as valid under the laws of that State any notari-
22 zation performed by a notarial officer of any other State
23 if—

24 (1) the notarization is valid under the laws of
25 the notarial officer’s State or under this Act; and

1 (2)(A) the notarization was performed under or
2 relates to a public act, record, or judicial proceeding
3 of the notarial officer's State; or

4 (B) the notarization occurs in or affects inter-
5 state commerce.

6 (b) LEGAL EFFECT OF RECOGNIZED NOTARIZA-
7 TION.—A notarization recognized under subsection (a)
8 shall have the same effect under the laws of the recog-
9 nizing State as if that notarization was validly performed
10 by a notarial officer of the recognizing State, without re-
11 gard to whether the notarization was performed—

12 (1) with respect to—

13 (A) a tangible record; or

14 (B) an electronic record; or

15 (2) for—

16 (A) an individual in the physical presence
17 of the notarial officer; or

18 (B) a remotely located individual.

19 (c) PRESUMPTION OF GENUINENESS.—In a deter-
20 mination of the validity of a notarization for the purposes
21 of subsection (a), the signature and title of an individual
22 performing a notarization shall be prima facie evidence in
23 any State court or judicial proceeding that the signature
24 is genuine and that the individual holds the designated
25 title.

1 (d) CONCLUSIVE EVIDENCE OF AUTHORITY.—In a
 2 determination of the validity of a notarization for the pur-
 3 poses of subsection (a), the signature and title of the fol-
 4 lowing notarial officers of a State conclusively establish
 5 the authority of the officer to perform the notarization:

6 (1) A notary public of that State.

7 (2) A judge, clerk, or deputy clerk of a court
 8 of that State.

9 **SEC. 7. ELECTRONIC AND REMOTE NOTARIZATION NOT RE-**
 10 **QUIRED.**

11 Nothing in this Act may be construed to require a
 12 notary public to perform a notarization—

13 (1) with respect to an electronic record;

14 (2) for a remotely located individual; or

15 (3) using a technology that the notary public
 16 has not selected.

17 **SEC. 8. VALIDITY OF NOTARIZATIONS; RIGHTS OF AG-**
 18 **GRIEVED PERSONS NOT AFFECTED; STATE**
 19 **LAWS ON THE PRACTICE OF LAW NOT AF-**
 20 **FECTED.**

21 (a) VALIDITY NOT AFFECTED.—The failure of a no-
 22 tary public to meet a requirement under section 3 or 4
 23 in the performance of a notarization, or the failure of a
 24 notarization to conform to a requirement under section 3

1 or 4, shall not invalidate or impair the recognition of the
2 notarization.

3 (b) RIGHTS OF AGGRIEVED PERSONS.—The validity
4 and recognition of a notarization under this Act may not
5 be construed to prevent an aggrieved person from seeking
6 to invalidate a record or transaction that is the subject
7 of a notarization or from seeking other remedies based on
8 State or Federal law other than this Act for any reason
9 not specified in this Act, including on the basis—

10 (1) that a person did not, with present intent
11 to authenticate or adopt a record, execute a signa-
12 ture on the record;

13 (2) that an individual was incompetent, lacked
14 authority or capacity to authenticate or adopt a
15 record, or did not knowingly and voluntarily authen-
16 ticate or adopt a record; or

17 (3) of fraud, forgery, mistake, misrepresenta-
18 tion, impersonation, duress, undue influence, or
19 other invalidating cause.

20 (c) RULE OF CONSTRUCTION.—Nothing in this Act
21 may be construed to affect a State law governing, author-
22 izing, or prohibiting the practice of law.

23 **SEC. 9. EXCEPTION TO PREEMPTION.**

24 (a) IN GENERAL.—A State law may modify, limit, or
25 supersede the provisions of section 3, or subsections (a)

1 or (b) of section 4, with respect to State law only if that
2 State law—

3 (1) either—

4 (A) constitutes an enactment or adoption
5 of the Revised Uniform Law on Notarial Acts,
6 as approved and recommended for enactment in
7 all the States by the National Conference of
8 Commissioners on Uniform State Laws in
9 2018, except that a modification to such Law
10 enacted or adopted by a State shall be pre-
11 empted to the extent such modification—

12 (i) is inconsistent with a provision of
13 section 3 or subsections (a) or (b) of sec-
14 tion 4, as applicable; or

15 (ii) would not be permitted under sub-
16 paragraph (B); or

17 (B) specifies additional or alternative pro-
18 cedures or requirements for the performance of
19 notarizations with respect to electronic records
20 or for remotely located individuals, if those ad-
21 ditional or alternative procedures or require-
22 ments—

23 (i) are consistent with section 3 and
24 subsections (a) and (b) of section 4; and

1 (ii) do not accord greater legal effect
2 to the implementation or application of a
3 specific technology or technical specifica-
4 tion for performing those notarizations;
5 and

6 (2) requires the retention of an audio and vis-
7 ual recording of the performance of a notarization
8 for a remotely located individual for a period of not
9 less than 5 years after the recording is created.

10 (b) **RULE OF CONSTRUCTION.**—Nothing in section 5
11 or 6 may be construed to preclude the recognition of a
12 notarization under applicable State law, regardless of
13 whether such State law is consistent with section 5 or 6.

14 **SEC. 10. STANDARD OF CARE; SPECIAL NOTARIAL COMMIS-**
15 **SIONS.**

16 (a) **STATE STANDARDS OF CARE; AUTHORITY OF**
17 **STATE REGULATORY OFFICIALS.**—Nothing in this Act
18 may be construed to prevent a State, or a notarial regu-
19 latory official of a State, from—

20 (1) adopting a requirement in this Act as a
21 duty or standard of care under the laws of that
22 State or sanctioning a notary public for breach of
23 such a duty or standard of care;

24 (2) establishing requirements and qualifications
25 for, or denying, refusing to renew, revoking, sus-

1 pending, or imposing a condition on, a commission
2 or appointment as a notary public;

3 (3) creating or designating a class or type of
4 commission or appointment, or requiring an endorse-
5 ment or other authorization to be received by a no-
6 tary public, as a condition on the authority to per-
7 form notarizations with respect to electronic records
8 or for remotely located individuals; or

9 (4) prohibiting a notary public from performing
10 a notarization under section 3 or 4 as a sanction for
11 a breach of duty or standard of care or for official
12 misconduct.

13 (b) SPECIAL COMMISSIONS OR AUTHORIZATIONS
14 CREATED BY A STATE; SANCTION FOR BREACH OR OFFI-
15 CIAL MISCONDUCT.—A notary public may not perform a
16 notarization under section 3 or 4 if—

17 (1)(A) the notary public’s State has enacted a
18 law that creates or designates a class or type of
19 commission or appointment, or requires an endorse-
20 ment or other authorization to be received by a no-
21 tary public, as a condition on the authority to per-
22 form notarizations with respect to electronic records
23 or for remotely located individuals; and

24 (B) the commission or appointment of the no-
25 tary public is not of the class or type or the notary

1 public has not received the endorsement or other au-
2 thorization; or

3 (2) the notarial regulatory official of the notary
4 public's State has prohibited the notary public from
5 performing the notarization as a sanction for a
6 breach of duty or standard of care or for official
7 misconduct.

8 **SEC. 11. SEVERABILITY.**

9 If any provision of this Act or the application of such
10 provision to any person or circumstance is held to be in-
11 valid or unconstitutional, the remainder of this Act and
12 the application of the provisions thereof to other persons
13 or circumstances shall not be affected by that holding.

○