

116TH CONGRESS  
2D SESSION

# H. R. 6364

To authorize and establish minimum standards for electronic and remote notarizations that occur in or affect interstate commerce, to require any Federal court located in a State to recognize notarizations performed by a notary public commissioned by another State when the notarization occurs in or affects interstate commerce, and to require any State to recognize notarizations performed by a notary public commissioned by another State when the notarization occurs in or affects interstate commerce or when the notarization was performed under or relates to a public act, record, or judicial proceeding of the State in which the notary public was commissioned.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2020

Mr. RESCENTIALER (for himself and Ms. DEAN) 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

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## A BILL

To authorize and establish minimum standards for electronic and remote notarizations that occur in or affect interstate commerce, to require any Federal court located in a State to recognize notarizations performed by a notary public commissioned by another State when the notarization occurs in or affects interstate commerce, and to require any State to recognize notarizations performed by a notary public commissioned by another State when the notarization occurs in or affects interstate com-

merce or when the notarization was performed under or relates to a public act, record, or judicial proceeding of the State in which the notary public was commissioned.

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 2020”.

7       **SEC. 2. DEFINITIONS.**

8       In this Act:

9               (1) COMMISSIONED.—The term “commis-  
 10              sioned”, with respect to a notary public, includes a  
 11              notary public who is appointed and licensed.

12             (2) ELECTRONIC; ELECTRONIC RECORD; ELEC-  
 13              TRONIC SIGNATURE; INFORMATION; PERSON;  
 14              RECORD.—The terms “electronic”, “electronic  
 15              record”, “electronic signature”, “information”, “per-  
 16              son”, and “record” have the meanings given those  
 17              terms in section 106 of the Electronic Signatures in  
 18              Global and National Commerce Act (15 U.S.C.  
 19              7006).

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

1           (4) NOTARIZATION.—The term “notarization”  
2 includes any act—

3           (A) that a notary public may perform  
4 under Federal law, including this Act, or under  
5 the laws of the State in which the notary public  
6 is commissioned, without regard to whether the  
7 notary public performs the act—

8           (i) with respect to a tangible or elec-  
9 tronic record; or

10          (ii) in an individual, official, or rep-  
11 resentative capacity; and

12          (B) in which an individual making a state-  
13 ment or executing a record is not in the phys-  
14 ical presence of a notary public but is able to  
15 communicate with the notary public simulta-  
16 neously by sight and sound through an elec-  
17 tronic device or process at the time of the act.

18          (5) REQUIREMENT.—The term “requirement”  
19 includes a duty, a standard of care, and a prohibi-  
20 tion.

21          (6) SIMULTANEOUSLY.—The term “simulta-  
22 neously”, with respect to a communication between  
23 parties—

1 (A) means that each party communicates  
2 substantially simultaneously and without unrea-  
3 sonable interruption or disconnection; and

4 (B) includes a reasonably short delay that  
5 is inherent in, or common with respect to, the  
6 method used for the communication.

7 (7) STAMP OR SEAL OF OFFICE.—The term  
8 “stamp or seal of office” means an image that—

9 (A) contains information as specified under  
10 the law of the State in which a notary public  
11 is commissioned;

12 (B) a notary public uses to authenticate  
13 the notarization of a record; and

14 (C) may consist of—

15 (i) a physical image or impression af-  
16 fixed to or embossed on a tangible record;  
17 or

18 (ii) an electronic image attached to, or  
19 logically associated with, an electronic  
20 record.

21 (8) STATE.—The term “State”—

22 (A) means—

23 (i) any State of the United States;

24 (ii) the District of Columbia;

1 (iii) the Commonwealth of Puerto  
2 Rico;

3 (iv) any territory or possession of the  
4 United States; and

5 (v) any federally recognized Indian  
6 tribe; and

7 (B) includes any executive, legislative, or  
8 judicial agency, court, department, board, of-  
9 fice, clerk, recorder, register, commission, au-  
10 thority, institution, instrumentality, county,  
11 municipality, or other political subdivision of an  
12 entity described in any of clauses (i) through  
13 (v) of subparagraph (A).

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

17 A notary public commissioned under the laws of a  
18 State may perform a notarization that occurs in or affects  
19 interstate commerce with respect to an electronic record,  
20 if—

21 (1)(A) a stamp or seal of office is attached to  
22 or logically associated with the electronic record; or

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

1 under other applicable law, is attached to or logically  
2 associated with the signature or record; and

3 (2) the stamp or seal of office, electronic signa-  
4 ture, or other information described in paragraph  
5 (1) is securely bound to the electronic record in a  
6 manner that is capable of independent verification  
7 and renders any subsequent change or modification  
8 to the electronic record evident.

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

11 (a) REQUIREMENTS OF REMOTE NOTARIZATION.—A  
12 notary public commissioned under the laws of a State may  
13 perform a notarization that occurs in or affects interstate  
14 commerce for an individual not in the physical presence  
15 of the notary public, if—

16 (1) the individual and the notary public are able  
17 to communicate simultaneously by sight and sound  
18 through an electronic device or process at the time  
19 of the notarization;

20 (2) the notary public—

21 (A) has reasonably identified the individual  
22 through—

23 (i) personal knowledge of the indi-  
24 vidual;

(ii) not fewer than 2 distinct types of processes or services through which a third person provides a means to verify the identity of the individual through a review of public or private data sources; or

(iii) oath or affirmation of a credible witness who—

(I)(aa) is in the physical presence of the notary public or the individual; or

(bb) is able to communicate with the notary public and the individual simultaneously by sight and sound through an electronic device or process at the time of the notarization;

(II) has personal knowledge of the individual; and

(III) has been reasonably identified by the notary public under clause (i) or (ii); and

(B) either directly or through an agent—

(i) creates an audio and visual recording of the performance of the notarization; and

(ii) retains the recording created under clause (i)—

(I) as a notarial record during the term of the notary public's office, including renewals of that term, unless a law of the State requires a different period of retention; and

(II) if any laws of the State govern the content, retention, security, use, effect, and disclosure of that recording and any information contained in the recording, in accordance with those laws; and

(3) with respect to an individual physically located outside the geographic boundaries of a State or other location subject to the jurisdiction of the United States at the time of the notarization—

(A) the record—

(i) is intended for filing with, or relates to a matter before, a court, governmental entity, public official, or other entity subject to the jurisdiction of the United States; or

(ii) involves property located in the territorial jurisdiction of the United States



1 or a transaction substantially connected to  
2 the United States; and

3 (B) the notary public has no actual knowl-  
4 edge that the act of making the statement or  
5 signing the record is prohibited by the laws of  
6 the jurisdiction in which the individual is phys-  
7 ically located.

8 (b) PERSONAL APPEARANCE SATISFIED.—If a State  
9 or Federal law requires an individual to appear personally  
10 before or be in the physical presence of a notary public  
11 at the time of a notarization that occurs in or affects inter-  
12 state commerce, that requirement is satisfied if the indi-  
13 vidual and the notary public are not in the physical pres-  
14 ence of each other but can communicate simultaneously  
15 by sight and sound through an electronic device or process  
16 at the time of the notarization.

17 **SEC. 5. RECOGNITION OF NOTARIZATIONS IN FEDERAL**  
18 **COURT.**

19 Each court of the United States shall recognize any  
20 notarization performed by a notary public commissioned  
21 under the laws of a State other than the State in which  
22 the court is located if—

23 (1) the notarization occurs in or affects inter-  
24 state commerce; and

1           (2)(A) a stamp or seal of office is affixed or  
2           embossed on a tangible record; or

3           (B) in the case of an electronic record—

4                 (i) a stamp or seal of office is attached to  
5                 or logically associated with the electronic  
6                 record; or

7                 (ii) the electronic signature of the notary  
8                 public, and all other information required to be  
9                 included under other applicable law, is attached  
10                to or logically associated with the electronic  
11                record.

12 **SEC. 6. RECOGNITION BY STATE OF NOTARIZATIONS PER-**  
13 **FORMED UNDER AUTHORITY OF ANOTHER**  
14 **STATE.**

15         Each State shall recognize as having the same effect  
16         under the laws of that State as if performed by a notary  
17         public of that State any notarization performed by a no-  
18         tary public commissioned under the laws of any other  
19         State if—

20               (1)(A) the notarization was performed under or  
21               relates to a public act, record, or judicial proceeding  
22               of the State in which the notary public is commis-  
23               sioned; or

24               (B) the notarization occurs in or affects inter-  
25               state commerce; and

1           (2)(A) a stamp or seal of office is affixed or  
2           embossed on a tangible record; or

3           (B) in the case of an electronic record—

4                 (i) a stamp or seal of office is attached to  
5                 or logically associated with the electronic  
6                 record; or

7                 (ii) the electronic signature of the notary  
8                 public, and all other information required to be  
9                 included by other applicable law, is attached to  
10                or logically associated with the electronic  
11                record.

12 **SEC. 7. ELECTRONIC AND REMOTE NOTARIZATION NOT RE-**  
13 **QUIRED.**

14         Nothing in this Act may be construed to require a  
15         notary public commissioned under the laws of a State to  
16         perform a notarization—

17                 (1) with respect to an electronic record;

18                 (2) for an individual not in the physical pres-  
19                 ence of the notary public; or

20                 (3) using a technology that the notary public  
21                 has not selected.

1 **SEC. 8. RIGHTS OF AGGRIEVED PERSONS NOT AFFECTED;**  
2 **STATE LAWS ON THE PRACTICE OF LAW NOT**  
3 **AFFECTED.**

4 (a) IN GENERAL.—The validity and recognition of a  
5 notarization under this Act may not be construed to pre-  
6 vent an aggrieved person from seeking to invalidate a  
7 record or transaction that is the subject of a notarization  
8 or from seeking other remedies based on State or Federal  
9 law other than this Act for any reason not addressed in  
10 this Act, including on the basis—

11 (1) that a person did not, with present intent  
12 to authenticate or adopt a record—

13 (A) execute or adopt on the record a tan-  
14 gible symbol; or

15 (B) attach to or logically associate with the  
16 record an electronic signature;

17 (2) that an individual was incompetent, lacked  
18 authority or capacity to execute the record, or did  
19 not knowingly and voluntarily execute a record; or

20 (3) of fraud, forgery, mistake, misrepresenta-  
21 tion, impersonation, duress, undue influence, or  
22 other invalidating cause.

23 (b) RULE OF CONSTRUCTION.—Nothing in this Act  
24 may be construed to affect a State law governing, author-  
25 izing, or prohibiting the practice of law.

1 **SEC. 9. EXCEPTION TO PREEMPTION.**

2 A State law shall not be affected by a provision of  
3 section 3 or 4 of this Act to the extent that the law—

4 (1) constitutes an enactment or adoption of the  
5 Revised Uniform Law on Notarial Acts, as approved  
6 and recommended for enactment in all States by the  
7 National Conference of Commissioners on Uniform  
8 State Laws in 2018, except that a modification to  
9 such Act enacted by a State shall be preempted to  
10 the extent the modification is inconsistent with this  
11 Act or would not be permitted under paragraph (2);  
12 or

13 (2) specifies additional or alternative procedures  
14 or requirements for the performance of notarizations  
15 with respect to electronic records or for individuals  
16 not in the physical presence of a notary public at the  
17 time of the notarization, if those additional or alter-  
18 native procedures or requirements—

19 (A) are consistent with this Act; and

20 (B) do not accord greater legal effect to  
21 the implementation or application of a specific  
22 technology or technical specification for per-  
23 forming those notarizations.

1 **SEC. 10. VALIDITY OF NOTARIZATIONS; STANDARD OF**  
2 **CARE; SPECIAL NOTARIAL COMMISSIONS;**  
3 **SAVINGS CLAUSE.**

4 (a) **VALIDITY NOT AFFECTED.**—The failure of a no-  
5 tary public to meet a requirement specified in this Act  
6 shall not invalidate or impair the recognition of a notariza-  
7 tion performed by the notary public.

8 (b) **RULE OF CONSTRUCTION.**—This Act may not be  
9 construed to create a public or private cause of action or  
10 remedy.

11 (c) **STATE STANDARDS OF CARE; AUTHORITY OF**  
12 **STATE COMMISSIONING OFFICIALS.**—Nothing in this Act  
13 may be construed to prevent a State, or a commissioning  
14 official of a State, from—

15 (1) adopting a requirement in this Act as a  
16 duty or standard of care under the laws of that  
17 State or sanctioning a notary public for breach of  
18 such a duty or standard of care;

19 (2) establishing requirements and qualifications  
20 for denying, refusing to renew, revoking, suspending,  
21 or imposing a condition on a commission as a notary  
22 public; or

23 (3) creating or designating a class or type of  
24 commission, or requiring an endorsement or other  
25 authorization to be received by a notary public, as  
26 a condition on the authority to perform notarial acts

1 with respect to electronic records or for individuals  
2 not in the physical presence of the notary public.

3 (d) SPECIAL COMMISSIONS CREATED BY A STATE.—

4 A notary public commissioned under the laws of a State  
5 may not perform a notarization under section 3 or 4 of  
6 this Act if—

7 (1) the State has enacted a law that creates or  
8 designates a class or type of commission, or requires  
9 an endorsement or other authorization to be received  
10 by a notary public, as a condition on the authority  
11 to perform notarial acts with respect to electronic  
12 records or for individuals not in the physical pres-  
13 ence of the notary public; and

14 (2) the commission of the notary public is not  
15 of the class or type or the notary public has not re-  
16 ceived the endorsement or other authorization.

17 (e) SAVINGS CLAUSE.—This Act shall not affect the  
18 validity of a notarization performed before the date of en-  
19 actment of this Act.

20 **SEC. 11. SEVERABILITY.**

21 If any provision of this Act or the application of such  
22 a provision to any person or circumstance is held to be  
23 invalid or unconstitutional, the remainder of this Act and  
24 the application of the provisions of this Act to other per-

1 sons or circumstances shall not be affected by that hold-  
2 ing.

