

117TH CONGRESS
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H. R. 3962

[Report No. 117-]

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

JULY --, 2022

Reported from the Committee on Energy and Commerce with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 17, 2021]

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 2022” or the “SECURE Notarization Act of 2022”.*

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 *a remotely located individual, and (if applicable) a*
14 *credible witness to communicate with each other si-*
15 *multaneously by sight and sound during the notariza-*
16 *tion.*

17 (2) *ELECTRONIC; ELECTRONIC RECORD; ELEC-*
18 *TRONIC SIGNATURE; INFORMATION; PERSON;*
19 *RECORD.*—*The terms “electronic”, “electronic record”,*
20 *“electronic signature”, “information”, “person”, and*
21 *“record” have the meanings given those terms in sec-*
22 *tion 106 of the Electronic Signatures in Global and*
23 *National Commerce Act (15 U.S.C. 7006).*

24 (3) *LAW.*—*The term “law” includes any statute,*
25 *regulation, rule, or rule of law.*

1 (4) *NOTARIAL OFFICER.*—*The term “notarial of-*
2 *ficer” means—*

3 (A) *a notary public; or*

4 (B) *any other individual authorized to per-*
5 *form a notarization under the laws of a State*
6 *without a commission or appointment as a no-*
7 *tary public.*

8 (5) *NOTARIAL OFFICER’S STATE; NOTARY PUB-*
9 *LIC’S STATE.*—*The term “notarial officer’s State” or*
10 *“notary public’s State” means the State in which a*
11 *notarial officer, or a notary public, as applicable, is*
12 *authorized to perform a notarization.*

13 (6) *NOTARIZATION.*—*The term “notarization”—*

14 (A) *means any act that a notarial officer*
15 *may perform under—*

16 (i) *Federal law, including this Act; or*

17 (ii) *the laws of the notarial officer’s*
18 *State; and*

19 (B) *includes any act described in subpara-*
20 *graph (A) and performed by a notarial officer—*

21 (i) *with respect to—*

22 (I) *a tangible record; or*

23 (II) *an electronic record; and*

24 (ii) *for—*

1 (I) *an individual in the physical*
2 *presence of the notarial officer; or*

3 (II) *a remotely located individual.*

4 (7) *NOTARY PUBLIC.—The term “notary public”*
5 *means an individual commissioned or appointed as a*
6 *notary public to perform a notarization under the*
7 *laws of a State.*

8 (8) *PERSONAL KNOWLEDGE.—The term “per-*
9 *sonal knowledge”, with respect to the identity of an*
10 *individual, means knowledge of the identity of the in-*
11 *dividual through dealings sufficient to provide reason-*
12 *able certainty that the individual has the identity*
13 *claimed.*

14 (9) *REMOTELY LOCATED INDIVIDUAL.—The term*
15 *“remotely located individual”, with respect to a nota-*
16 *rization, means an individual who is not in the phys-*
17 *ical presence of the notarial officer performing the no-*
18 *tarization.*

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

22 (11) *SIGNATURE.—The term “signature”*
23 *means—*

24 (A) *an electronic signature; or*

1 (B) a tangible symbol executed or adopted
2 by a person and evidencing the present intent to
3 authenticate or adopt a record.

4 (12) *SIMULTANEOUSLY*.—The term “simulta-
5 neously”, with respect to a communication between
6 parties—

7 (A) means that each party communicates
8 substantially simultaneously and without unrea-
9 sonable interruption or disconnection; and

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

13 (13) *STATE*.—The term “State”—

14 (A) means—

15 (i) any State of the United States;

16 (ii) the District of Columbia;

17 (iii) the Commonwealth of Puerto
18 Rico;

19 (iv) any territory or possession of the
20 United States; and

21 (v) any federally recognized Indian
22 Tribe; and

23 (B) includes any executive, legislative, or
24 judicial agency, court, department, board, office,
25 clerk, recorder, register, registrar, commission,

1 *authority, institution, instrumentality, county,*
2 *municipality, or other political subdivision of an*
3 *entity described in any of clauses (i) through (v)*
4 *of subparagraph (A).*

5 **SEC. 3. AUTHORIZATION TO PERFORM AND MINIMUM**
6 **STANDARDS FOR ELECTRONIC NOTARIZA-**
7 **TION.**

8 *(a) AUTHORIZATION.—Unless prohibited under section*
9 *10, and subject to subsection (b), a notary public may per-*
10 *form a notarization that occurs in or affects interstate com-*
11 *merce with respect to an electronic record.*

12 *(b) REQUIREMENTS OF ELECTRONIC NOTARIZA-*
13 *TION.—If a notary public performs a notarization under*
14 *subsection (a), the following requirements shall apply with*
15 *respect to the notarization:*

16 *(1) The electronic signature of the notary public,*
17 *and all other information required to be included*
18 *under other applicable law, shall be attached to or*
19 *logically associated with the electronic record.*

20 *(2) The electronic signature and other informa-*
21 *tion described in paragraph (1) shall be bound to the*
22 *electronic record in a manner that renders any subse-*
23 *quent change or modification to the electronic record*
24 *evident.*

1 **SEC. 4. AUTHORIZATION TO PERFORM AND MINIMUM**
2 **STANDARDS FOR REMOTE NOTARIZATION.**

3 (a) *AUTHORIZATION.*—Unless prohibited under section
4 10, and subject to subsection (b), a notary public may per-
5 form a notarization that occurs in or affects interstate com-
6 merce for a remotely located individual.

7 (b) *REQUIREMENTS OF REMOTE NOTARIZATION.*—If a
8 notary public performs a notarization under subsection (a),
9 the following requirements shall apply with respect to the
10 notarization:

11 (1) *The remotely located individual shall appear*
12 *personally before the notary public at the time of the*
13 *notarization by using communication technology.*

14 (2) *The notary public shall—*

15 (A) *reasonably identify the remotely located*
16 *individual—*

17 (i) *through personal knowledge of the*
18 *identity of the remotely located individual;*
19 *or*

20 (ii) *by obtaining satisfactory evidence*
21 *of the identity of the remotely located indi-*
22 *vidual by—*

23 (I) *using not fewer than 2 distinct*
24 *types of processes or services through*
25 *which a third person provides a means*
26 *to verify the identity of the remotely lo-*

1 *cated individual through a review of*
2 *public or private data sources; or*

3 *(II) oath or affirmation of a cred-*
4 *ible witness who—*

5 *(aa)(AA) is in the physical*
6 *presence of the notary public or*
7 *the remotely located individual; or*

8 *(BB) appears personally be-*
9 *fore the notary public and the re-*
10 *motely located individual by*
11 *using communication technology;*

12 *(bb) has personal knowledge*
13 *of the identity of the remotely lo-*
14 *cated individual; and*

15 *(cc) has been identified by*
16 *the notary public in the same*
17 *manner as specified for identifica-*
18 *tion of a remotely located indi-*
19 *vidual under clause (i) or sub-*
20 *clause (I) of this clause;*

21 *(B) either directly or through an agent—*

22 *(i) create an audio and visual record-*
23 *ing of the performance of the notarization;*
24 *and*

1 (ii) notwithstanding any resignation
2 from, or revocation, suspension, or termi-
3 nation of, the notary public's commission or
4 appointment, retain the recording created
5 under clause (i) as a notarial record—

6 (I) for a period of not less than—

7 (aa) if an applicable law of
8 the notary public's State specifies
9 a period of retention, the greater
10 of—

11 (AA) that specified pe-
12 riod; or

13 (BB) 5 years after the
14 date on which the recording
15 is created; or

16 (bb) if no applicable law of
17 the notary public's State specifies
18 a period of retention, 10 years
19 after the date on which the record-
20 ing is created; and

21 (II) if any applicable law of the
22 notary public's State governs the con-
23 tent, manner or place of retention, se-
24 curity, use, effect, or disclosure of the
25 recording or any information con-

1 *tained in the recording, in accordance*
2 *with that law; and*

3 *(C) if the notarization is performed with re-*
4 *spect to a tangible or electronic record, take rea-*
5 *sonable steps to confirm that the record before the*
6 *notary public is the same record with respect to*
7 *which the remotely located individual made a*
8 *statement or on which the individual executed a*
9 *signature.*

10 *(3) If a guardian, conservator, executor, personal*
11 *representative, administrator, or similar fiduciary or*
12 *successor is appointed for or on behalf of a notary*
13 *public or a deceased notary public under applicable*
14 *law, that person shall retain the recording under*
15 *paragraph (2)(B)(i), unless—*

16 *(A) another person is obligated to retain the*
17 *recording under applicable law of the notary*
18 *public's State; or*

19 *(B)(i) under applicable law of the notary*
20 *public's State, that person may transmit the re-*
21 *recording to an office, archive, or repository ap-*
22 *proved or designated by the State; and*

23 *(ii) that person transmits the recording to*
24 *the office, archive, or repository described in*

1 *clause (i) in accordance with applicable law of*
2 *the notary public's State.*

3 *(4) If the remotely located individual is phys-*
4 *ically located outside the geographic boundaries of a*
5 *State, or is otherwise physically located in a location*
6 *that is not subject to the jurisdiction of the United*
7 *States, at the time of the notarization—*

8 *(A) the record shall—*

9 *(i) be intended for filing with, or relate*
10 *to a matter before, a court, governmental*
11 *entity, public official, or other entity that is*
12 *subject to the jurisdiction of the United*
13 *States; or*

14 *(ii) involve property located in the ter-*
15 *ritorial jurisdiction of the United States or*
16 *a transaction substantially connected to the*
17 *United States; and*

18 *(B) the act of making the statement or sign-*
19 *ing the record may not be prohibited by a law*
20 *of the jurisdiction in which the individual is*
21 *physically located.*

22 *(c) PERSONAL APPEARANCE SATISFIED.—If a State or*
23 *Federal law requires an individual to appear personally*
24 *before or be in the physical presence of a notary public at*

1 *the time of a notarization, that requirement shall be consid-*
2 *ered to be satisfied if—*

3 *(1) the individual—*

4 *(A) is a remotely located individual; and*

5 *(B) appears personally before the notary*
6 *public at the time of the notarization by using*
7 *communication technology; and*

8 *(2)(A) the notarization was performed under or*
9 *relates to a public act, record, or judicial proceeding*
10 *of the notary public's State; or*

11 *(B) the notarization occurs in or affects inter-*
12 *state commerce.*

13 **SEC. 5. RECOGNITION OF NOTARIZATIONS IN FEDERAL**
14 **COURT.**

15 *(a) RECOGNITION OF VALIDITY.—Each court of the*
16 *United States shall recognize as valid under the State or*
17 *Federal law applicable in a judicial proceeding before the*
18 *court any notarization performed by a notarial officer of*
19 *any State if the notarization is valid under the laws of the*
20 *notarial officer's State or under this Act.*

21 *(b) LEGAL EFFECT OF RECOGNIZED NOTARIZATION.—*
22 *A notarization recognized under subsection (a) shall have*
23 *the same effect under the State or Federal law applicable*
24 *in the applicable judicial proceeding as if that notarization*
25 *was validly performed—*

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

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

4 (2) *without regard to whether the notarization*
5 *was performed—*

6 (A) *with respect to—*

7 (i) *a tangible record; or*

8 (ii) *an electronic record; or*

9 (B) *for—*

10 (i) *an individual in the physical pres-*
11 *ence of the notarial officer; or*

12 (ii) *a remotely located individual.*

13 (c) *PRESUMPTION OF GENUINENESS.—In a deter-*
14 *mination of the validity of a notarization for the purposes*
15 *of subsection (a), the signature and title of an individual*
16 *performing the notarization shall be prima facie evidence*
17 *in any court of the United States that the signature of the*
18 *individual is genuine and that the individual holds the des-*
19 *ignated title.*

20 (d) *CONCLUSIVE EVIDENCE OF AUTHORITY.—In a de-*
21 *termination of the validity of a notarization for the pur-*
22 *poses of subsection (a), the signature and title of the fol-*
23 *lowing notarial officers of a State shall conclusively estab-*
24 *lish the authority of the officer to perform the notarization:*

25 (1) *A notary public of that State.*

1 (2) *A judge, clerk, or deputy clerk of a court of*
2 *that State.*

3 **SEC. 6. RECOGNITION BY STATE OF NOTARIZATIONS PER-**
4 **FORMED UNDER AUTHORITY OF ANOTHER**
5 **STATE.**

6 (a) *RECOGNITION OF VALIDITY.—Each State shall rec-*
7 *ognize as valid under the laws of that State any notari-*
8 *zation performed by a notarial officer of any other State if—*

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

11 (2)(A) *the notarization was performed under or*
12 *relates to a public act, record, or judicial proceeding*
13 *of the notarial officer’s State; or*

14 (B) *the notarization occurs in or affects inter-*
15 *state commerce.*

16 (b) *LEGAL EFFECT OF RECOGNIZED NOTARIZATION.—*
17 *A notarization recognized under subsection (a) shall have*
18 *the same effect under the laws of the recognizing State as*
19 *if that notarization was validly performed by a notarial*
20 *officer of the recognizing State, without regard to whether*
21 *the notarization was performed—*

22 (1) *with respect to—*

23 (A) *a tangible record; or*

24 (B) *an electronic record; or*

25 (2) *for—*

1 (A) *an individual in the physical presence*
2 *of the notarial officer; or*

3 (B) *a remotely located individual.*

4 (c) *PRESUMPTION OF GENUINENESS.—In a deter-*
5 *mination of the validity of a notarization for the purposes*
6 *of subsection (a), the signature and title of an individual*
7 *performing a notarization shall be prima facie evidence in*
8 *any State court or judicial proceeding that the signature*
9 *is genuine and that the individual holds the designated title.*

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

15 (1) *A notary public of that State.*

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

18 **SEC. 7. ELECTRONIC AND REMOTE NOTARIZATION NOT RE-**
19 **QUIRED.**

20 *Nothing in this Act may be construed to require a no-*
21 *tary public to perform a notarization—*

22 (1) *with respect to an electronic record;*

23 (2) *for a remotely located individual; or*

24 (3) *using a technology that the notary public has*
25 *not selected.*

1 **SEC. 8. VALIDITY OF NOTARIZATIONS; RIGHTS OF AG-**
2 **GRIEVED PERSONS NOT AFFECTED; STATE**
3 **LAWS ON THE PRACTICE OF LAW NOT AF-**
4 **FECTED.**

5 (a) *VALIDITY NOT AFFECTED.*—*The failure of a no-*
6 *tary public to meet a requirement under section 3 or 4 in*
7 *the performance of a notarization, or the failure of a notari-*
8 *zation to conform to a requirement under section 3 or 4,*
9 *shall not invalidate or impair the validity or recognition*
10 *of the notarization.*

11 (b) *RIGHTS OF AGGRIEVED PERSONS.*—*The validity*
12 *and recognition of a notarization under this Act may not*
13 *be construed to prevent an aggrieved person from seeking*
14 *to invalidate a record or transaction that is the subject of*
15 *a notarization or from seeking other remedies based on*
16 *State or Federal law other than this Act for any reason*
17 *not specified in this Act, including on the basis—*

18 (1) *that a person did not, with present intent to*
19 *authenticate or adopt a record, execute a signature on*
20 *the record;*

21 (2) *that an individual was incompetent, lacked*
22 *authority or capacity to authenticate or adopt a*
23 *record, or did not knowingly and voluntarily authen-*
24 *ticate or adopt a record; or*

1 (3) of fraud, forgery, mistake, misrepresentation,
2 impersonation, duress, undue influence, or other in-
3 validating cause.

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

7 **SEC. 9. EXCEPTION TO PREEMPTION.**

8 (a) *IN GENERAL.*—A State law may modify, limit, or
9 supersede the provisions of section 3, or subsection (a) or
10 (b) of section 4, with respect to State law only if that State
11 law—

12 (1) either—

13 (A) constitutes an enactment or adoption of
14 the Revised Uniform Law on Notarial Acts, as
15 approved and recommended for enactment in all
16 the States by the National Conference of Com-
17 missioners on Uniform State Laws in 2018 or
18 the Revised Uniform Law on Notarial Acts, as
19 approved and recommended for enactment in all
20 the States by the National Conference of Com-
21 missioners on Uniform State Laws in 2021, ex-
22 cept that a modification to such Law enacted or
23 adopted by a State shall be preempted to the ex-
24 tent such modification—

1 (i) is inconsistent with a provision of
2 section 3 or subsection (a) or (b) of section
3 4, as applicable; or

4 (ii) would not be permitted under sub-
5 paragraph (B); or

6 (B) specifies additional or alternative pro-
7 cedures or requirements for the performance of
8 notarizations with respect to electronic records or
9 for remotely located individuals, if those addi-
10 tional or alternative procedures or require-
11 ments—

12 (i) are consistent with section 3 and
13 subsections (a) and (b) of section 4; and

14 (ii) do not accord greater legal effect to
15 the implementation or application of a spe-
16 cific technology or technical specification for
17 performing those notarizations; and

18 (2) requires the retention of an audio and visual
19 recording of the performance of a notarization for a
20 remotely located individual for a period of not less
21 than 5 years after the recording is created.

22 (b) *RULE OF CONSTRUCTION.*—Nothing in section 5
23 or 6 may be construed to preclude the recognition of a nota-
24 rization under applicable State law, regardless of whether
25 such State law is consistent with section 5 or 6.

1 **SEC. 10. STANDARD OF CARE; SPECIAL NOTARIAL COMMIS-**
2 **SIONS.**

3 (a) *STATE STANDARDS OF CARE; AUTHORITY OF*
4 *STATE REGULATORY OFFICIALS.*—*Nothing in this Act may*
5 *be construed to prevent a State, or a notarial regulatory*
6 *official of a State, from—*

7 (1) *adopting a requirement in this Act as a duty*
8 *or standard of care under the laws of that State or*
9 *sanctioning a notary public for breach of such a duty*
10 *or standard of care;*

11 (2) *establishing requirements and qualifications*
12 *for, or denying, refusing to renew, revoking, sus-*
13 *pending, or imposing a condition on, a commission*
14 *or appointment as a notary public;*

15 (3) *creating or designating a class or type of*
16 *commission or appointment, or requiring an endorse-*
17 *ment or other authorization to be received by a no-*
18 *tary public, as a condition on the authority to per-*
19 *form notarizations with respect to electronic records*
20 *or for remotely located individuals; or*

21 (4) *prohibiting a notary public from performing*
22 *a notarization under section 3 or 4 as a sanction for*
23 *a breach of duty or standard of care or for official*
24 *misconduct.*

25 (b) **SPECIAL COMMISSIONS OR AUTHORIZATIONS CRE-**
26 **ATED BY A STATE; SANCTION FOR BREACH OR OFFICIAL**

1 *MISCONDUCT.*—*A notary public may not perform a notari-*
2 *zation under section 3 or 4 if—*

3 (1)(A) *the notary public’s State has enacted a*
4 *law that creates or designates a class or type of com-*
5 *mission or appointment, or requires an endorsement*
6 *or other authorization to be received by a notary pub-*
7 *lic, as a condition on the authority to perform*
8 *notarizations with respect to electronic records or for*
9 *remotely located individuals; and*

10 (B) *the commission or appointment of the notary*
11 *public is not of the class or type or the notary public*
12 *has not received the endorsement or other authoriza-*
13 *tion; or*

14 (2) *the notarial regulatory official of the notary*
15 *public’s State has prohibited the notary public from*
16 *performing the notarization as a sanction for a*
17 *breach of duty or standard of care or for official mis-*
18 *conduct.*

19 ***SEC. 11. SEVERABILITY.***

20 *If any provision of this Act or the application of such*
21 *provision to any person or circumstance is held to be in-*
22 *valid or unconstitutional, the remainder of this Act and*
23 *the application of the provisions thereof to other persons*
24 *or circumstances shall not be affected by that holding.*