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. Aumle, Mr. Garcia 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. Reschenthaler, 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
4 SECTION 1. SHORT TITLE.
5
6 This Act may be cited as the “Securing and Enabling
7 Commerce Using Remote and Electronic Notarization Act
8 of 2021”.
9
10 SEC. 2. DEFINITIONS.
11
12 In this Act:
13
14 (1) COMMUNICATION TECHNOLOGY.—The term
15 “communication technology”, with respect to a nota-
16 rization, means an electronic device or process that
17 allows the notary public performing the notarization
18 and a remotely located individual to communicate
19 with each other simultaneously by sight and sound
20 during the notarization.
21
22 (2) ELECTRONIC; ELECTRONIC RECORD; ELECT-
23 TRONIC SIGNATURE; INFORMATION; PERSON;
24 RECORD.—The terms “electronic”, “electronic
25 record”, “electronic signature”, “information”, “per-
26 son”, and “record” have the meanings given those
terms in section 106 of the Electronic Signatures in
Global and National Commerce Act (15 U.S.C.
7006).

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

(4) **Notarial officer.**—The term “notarial
officer” means—

(A) a notary public; or

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

(5) **Notarial officer’s State; notary pub-
lic’s State.**—The term “notarial officer’s State” or
“notary public’s State” means the State in which a
notarial officer, or a notary public, as applicable, is
authorized to perform a notarization.

(6) **Notarization.**—The term “notariza-
tion”—

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

(i) Federal law, including this Act; or

(ii) the laws of the notarial officer’s
State; and
(B) includes any act described in subparagraph (A) and performed by a notarial officer—

(i) with respect to—

(I) a tangible record; or

(II) an electronic record; and

(ii) for—

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

(II) a remotely located individual.

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

(8) PERSONAL KNOWLEDGE.—The term “personal knowledge”, with respect to the identity of an individual, means knowledge of the identity of the individual through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(9) REMOTELY LOCATED INDIVIDUAL.—The term “remotely located individual”, with respect to a notarization, means an individual who is not in the physical presence of the notarial officer performing the notarization.
(10) **REQUIREMENT.**—The term “requirement” includes a duty, a standard of care, and a prohibition.

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

(A) an electronic signature; or

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

(12) **SIMULTANEOUSLY.**—The term “simultaneously”, with respect to a communication between parties—

(A) means that each party communicates substantially simultaneously and without unreasonable interruption or disconnection; and

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

(13) **STATE.**—The term “State”—

(A) means—

(i) any State of the United States;

(ii) the District of Columbia;

(iii) the Commonwealth of Puerto Rico;
(iv) any territory or possession of the United States; and

(v) any federally recognized Indian Tribe; and

(B) includes any executive, legislative, or judicial agency, court, department, board, office, clerk, recorder, register, registrar, commission, authority, institution, instrumentality, county, municipality, or other political subdivision of an entity described in any of clauses (i) through (v) of subparagraph (A).

SEC. 3. AUTHORIZATION TO PERFORM AND MINIMUM STANDARDS FOR ELECTRONIC NOTARIZATION.

(a) Authorization.—Unless prohibited under section 10, and subject to subsection (b), a notary public may perform a notarization that occurs in or affects interstate commerce with respect to an electronic record.

(b) Requirements of Electronic Notarization.—If a notary public performs a notarization under subsection (a), the following requirements shall apply with respect to the notarization:

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

(2) The electronic signature and other information described in paragraph (1) shall be bound to the electronic record in a manner that renders any subsequent change or modification to the electronic record evident.

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

(a) Authorization.—Unless prohibited under section 10, and subject to subsection (b), a notary public may perform a notarization that occurs in or affects interstate commerce for a remotely located individual.

(b) Requirements of Remote Notarization.—If a notary public performs a notarization under subsection (a), the following requirements shall apply with respect to the notarization:

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

(2) The notary public shall—

(A) reasonably identify the remotely located individual—
(i) through personal knowledge of the
identity of the remotely located individual;
or

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

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

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

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

(BB) appears personally be-
fore the notary public and the re-
motely located individual by
using communication technology;
(bb) has personal knowledge of the identity of the remotely located individual; and

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

(B) either directly or through an agent—

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

(ii) notwithstanding any resignation from, or revocation, suspension, or termination of, the notary public’s commission or appointment, retain the recording created under clause (i) as a notarial record—

(I) for a period of not less than—

(aa) if an applicable law of the notary public’s State specifies a period of retention, the greater of—

(AA) that specified period; or
(BB) 5 years after the date on which the recording is created; or

(bb) if no applicable law of the notary public’s State specifies a period of retention, 10 years after the date on which the recording is created; and

(II) if any applicable law of the notary public’s State govern the content, manner or place of retention, security, use, effect, or disclosure of such recording or any information contained in the recording, in accordance with those laws; and

(C) if the notarization is performed with respect to a tangible or electronic record, take reasonable steps to confirm that the record before the notary public is the same record with respect to which the remotely located individual made a statement or on which the individual executed a signature.

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

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

(B)(i) under applicable law of the notary public’s State, that person may transmit the recording to an office, archive, or repository approved or designated by the State; and

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

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

(A) the record shall—

(i) be intended for filing with, or relate to a matter before, a court, governmental entity, public official, or other entity that is subject to the jurisdiction of the United States; or
(ii) involve property located in the territorial jurisdiction of the United States or a transaction substantially connected to the United States; and

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

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

(1) the individual—

(A) is a remotely located individual; and

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

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

(B) the notarization occurs in or affects inter-state commerce.
SEC. 5. RECOGNITION OF NOTARIZATIONS IN FEDERAL COURT.

(a) Recognition of Validity.—Each court of the United States shall recognize as valid under the State or Federal law applicable in a judicial proceeding before the court any notarization performed by a notarial officer of any State if the notarization is valid under the laws of the notarial officer’s State or under this Act.

(b) Legal Effect of Recognized Notarization.—A notarization recognized under subsection (a) shall have the same effect under the State or Federal law applicable in the applicable judicial proceeding as if that notarization was validly performed—

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

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

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

(A) with respect to—

(i) a tangible record; or

(ii) an electronic record; or

(B) for—

(i) an individual in the physical presence of the notarial officer; or

(ii) a remotely located individual.
(c) Presumption of Genuineness.—In a determination of the validity of a notarization for the purposes of subsection (a), the signature and title of an individual performing the notarization shall be prima facie evidence in any court of the United States that the signature of the individual is genuine and that the individual holds the designated title.

(d) Conclusive Evidence of Authority.—In a determination of the validity of a notarization for the purposes of subsection (a), the signature and title of the following notarial officers of a State shall conclusively establish the authority of the officer to perform the notarization:

(1) A notary public of that State.

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

SEC. 6. RECOGNITION BY STATE OF NOTARIZATIONS PERFORMED UNDER AUTHORITY OF ANOTHER STATE.

(a) Recognition of Validity.—Each State shall recognize as valid under the laws of that State any notarization performed by a notarial officer of any other State if—

(1) the notarization is valid under the laws of the notarial officer’s State or under this Act; and
(2)(A) the notarization was performed under or relates to a public act, record, or judicial proceeding of the notarial officer’s State; or

(B) the notarization occurs in or affects interstate commerce.

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

(1) with respect to—

(A) a tangible record; or

(B) an electronic record; or

(2) for—

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

(B) a remotely located individual.

(c) PRESUMPTION OF GENUINENESS.—In a determination of the validity of a notarization for the purposes of subsection (a), the signature and title of an individual performing a notarization shall be prima facie evidence in any State court or judicial proceeding that the signature is genuine and that the individual holds the designated title.
(d) **Conclusive Evidence of Authority.**—In a determination of the validity of a notarization for the purposes of subsection (a), the signature and title of the following notarial officers of a State conclusively establish the authority of the officer to perform the notarization:

1. A notary public of that State.
2. A judge, clerk, or deputy clerk of a court of that State.

**SEC. 7. ELECTRONIC AND REMOTE NOTARIZATION NOT REQUIRED.**

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

1. with respect to an electronic record;
2. for a remotely located individual; or
3. using a technology that the notary public has not selected.

**SEC. 8. VALIDITY OF NOTARIZATIONS; RIGHTS OF AGGRIEVED PERSONS NOT AFFECTED; STATE LAWS ON THE PRACTICE OF LAW NOT AFFECTED.**

(a) **Validity Not Affected.**—The failure of a notary public to meet a requirement under section 3 or 4 in the performance of a notarization, or the failure of a notarization to conform to a requirement under section 3...
or 4, shall not invalidate or impair the recognition of the
notarization.

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

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

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

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

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

SEC. 9. EXCEPTION TO PREEMPTION.

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

(1) either—

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

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

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

(B) specifies additional or alternative procedures or requirements for the performance of notarizations with respect to electronic records or for remotely located individuals, if those additional or alternative procedures or require-ments—

(i) are consistent with section 3 and subsections (a) and (b) of section 4; and
(ii) do not accord greater legal effect
to the implementation or application of a
specific technology or technical specification for performing those notarizations;
and

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

(b) Rule of Construction.—Nothing in section 5 or 6 may be construed to preclude the recognition of a notarization under applicable State law, regardless of whether such State law is consistent with section 5 or 6.

SEC. 10. STANDARD OF CARE; SPECIAL NOTARIAL COMMISSIONS.

(a) State Standards of Care; Authority of State Regulatory Officials.—Nothing in this Act may be construed to prevent a State, or a notarial regulatory official of a State, from—

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

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

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

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

(b) Special Commissions or Authorizations
Created by a State; Sanction for Breach or Official
Misconduct.—A notary public may not perform a
notarization under section 3 or 4 if—

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

(B) the commission or appointment of the no-
tary public is not of the class or type or the notary
public has not received the endorsement or other au-

thorization; or

(2) the notarial regulatory official of the notary

public’s State has prohibited the notary public from

performing the notarization as a sanction for a

breach of duty or standard of care or for official

misconduct.

SEC. 11. SEVERABILITY.

If any provision of this Act or the application of such

provision to any person or circumstance is held to be in-

valid or unconstitutional, the remainder of this Act and

the application of the provisions thereof to other persons

or circumstances shall not be affected by that holding.