

117TH CONGRESS
2D SESSION

H. R. 3962

IN THE SENATE OF THE UNITED STATES

JULY 28, 2022

Received; read twice and referred to the Committee on the Judiciary

AN ACT

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 notari-
16 zation.

17 (2) **ELECTRONIC; ELECTRONIC RECORD; ELEC-**
18 **TRONIC SIGNATURE; INFORMATION; PERSON;**
19 **RECORD.**—The terms “electronic”, “electronic
20 record”, “electronic signature”, “information”, “per-
21 son”, and “record” have the meanings given those
22 terms in section 106 of the Electronic Signatures in
23 Global and National Commerce Act (15 U.S.C.
24 7006).

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

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

5 (A) a notary public; or

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

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

15 (6) NOTARIZATION.—The term “notariza-
16 tion”—

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

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

20 (ii) the laws of the notarial officer’s
21 State; and

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

24 (i) with respect to—

25 (I) a tangible record; or

- 1 (II) an electronic record; and
2 (ii) for—
3 (I) an individual in the physical
4 presence of the notarial officer; or
5 (II) a remotely located individual.

6 (7) NOTARY PUBLIC.—The term “notary public” means an individual commissioned or appointed
7 as a notary public to perform a notarization under
8 the laws of a State.
9

10 (8) PERSONAL KNOWLEDGE.—The term “personal knowledge”, with respect to the identity of an
11 individual, means knowledge of the identity of the
12 individual through dealings sufficient to provide reasonable certainty that the individual has the identity
13 claimed.
14

15 (9) REMOTELY LOCATED INDIVIDUAL.—The
16 term “remotely located individual”, with respect to
17 a notarization, means an individual who is not in the
18 physical presence of the notarial officer performing
19 the notarization.
20

21 (10) REQUIREMENT.—The term “requirement”
22 includes a duty, a standard of care, and a prohibition.
23

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

1 (A) an electronic signature; or

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

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

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

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

14 (13) STATE.—The term “State”—

15 (A) means—

16 (i) any State of the United States;

17 (ii) the District of Columbia;

18 (iii) the Commonwealth of Puerto
19 Rico;

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

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

24 (B) includes any executive, legislative, or
25 judicial agency, court, department, board, of-

1 fice, clerk, recorder, register, registrar, commis-
2 sion, authority, institution, instrumentality,
3 county, municipality, or other political subdivi-
4 sion of an entity described in any of clauses (i)
5 through (v) of subparagraph (A).

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

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

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

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

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

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

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

7 (b) **REQUIREMENTS OF REMOTE NOTARIZATION.**—If
8 a notary public performs a notarization under subsection
9 (a), the following requirements shall apply with respect to
10 the 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 lo-
16 cated 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 dis-
24 tinct types of processes or services
25 through which a third person provides
26 a means to verify the identity of the

1 remotely located individual through a
2 review of public or private data
3 sources; or

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

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

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

14 (bb) has personal knowledge
15 of the identity of the remotely lo-
16 cated individual; and

17 (cc) has been identified by
18 the notary public in the same
19 manner as specified for identi-
20 fication of a remotely located in-
21 dividual under clause (i) or sub-
22 clause (I) of this clause;

23 (B) either directly or through an agent—

1 (i) create an audio and visual record-
2 ing of the performance of the notarization;
3 and

4 (ii) notwithstanding any resignation
5 from, or revocation, suspension, or termi-
6 nation of, the notary public's commission
7 or appointment, retain the recording cre-
8 ated under clause (i) as a notarial
9 record—

10 (I) for a period of not less
11 than—

12 (aa) if an applicable law of
13 the notary public's State specifies
14 a period of retention, the greater
15 of—

16 (AA) that specified pe-
17 riod; or

18 (BB) 5 years after the
19 date on which the recording
20 is created; or

21 (bb) if no applicable law of
22 the notary public's State specifies
23 a period of retention, 10 years
24 after the date on which the re-
25 cording is created; and

1 (II) if any applicable law of the
2 notary public's State governs the con-
3 tent, manner or place of retention, se-
4 curity, use, effect, or disclosure of the
5 recording or any information con-
6 tained in the recording, in accordance
7 with that law; and

8 (C) if the notarization is performed with
9 respect to a tangible or electronic record, take
10 reasonable steps to confirm that the record be-
11 fore the notary public is the same record with
12 respect to which the remotely located individual
13 made a statement or on which the individual ex-
14 ecuted a signature.

15 (3) If a guardian, conservator, executor, per-
16 sonal representative, administrator, or similar fidu-
17 ciary or successor is appointed for or on behalf of
18 a notary public or a deceased notary public under
19 applicable law, that person shall retain the recording
20 under paragraph (2)(B)(ii), unless—

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

24 (B)(i) under applicable law of the notary
25 public's State, that person may transmit the re-

1 cording to an office, archive, or repository ap-
2 proved or designated by the State; and

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

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

12 (A) the record shall—

13 (i) be intended for filing with, or re-
14 late to a matter before, a court, govern-
15 mental entity, public official, or other enti-
16 ty that is subject to the jurisdiction of the
17 United States; or

18 (ii) involve property located in the ter-
19 ritorial jurisdiction of the United States or
20 a transaction substantially connected to
21 the United States; and

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

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

6 (1) the individual—

7 (A) is a remotely located individual; and

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

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

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

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

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

24 (b) LEGAL EFFECT OF RECOGNIZED NOTARIZA-
25 TION.—A notarization recognized under subsection (a)

1 shall have the same effect under the State or Federal law
2 applicable in the applicable judicial proceeding as if that
3 notarization was validly performed—

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

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

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

9 (A) with respect to—

10 (i) a tangible record; or

11 (ii) an electronic record; or

12 (B) for—

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

15 (ii) a remotely located individual.

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

23 (d) CONCLUSIVE EVIDENCE OF AUTHORITY.—In a
24 determination of the validity of a notarization for the pur-
25 poses of subsection (a), the signature and title of the fol-

1 lowing notarial officers of a State shall conclusively estab-
2 lish the authority of the officer to perform the notariza-
3 tion:

4 (1) A notary public of that State.

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

7 **SEC. 6. RECOGNITION BY STATE OF NOTARIZATIONS PER-**
8 **FORMED UNDER AUTHORITY OF ANOTHER**
9 **STATE.**

10 (a) RECOGNITION OF VALIDITY.—Each State shall
11 recognize as valid under the laws of that State any notari-
12 zation performed by a notarial officer of any other State
13 if—

14 (1) the notarization is valid under the laws of
15 the notarial officer's State or under this Act; and

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

19 (B) the notarization occurs in or affects inter-
20 state commerce.

21 (b) LEGAL EFFECT OF RECOGNIZED NOTARIZA-
22 TION.—A notarization recognized under subsection (a)
23 shall have the same effect under the laws of the recog-
24 nizing State as if that notarization was validly performed

1 by a notarial officer of the recognizing State, without re-
2 gard to whether the notarization was performed—

3 (1) with respect to—

4 (A) a tangible record; or

5 (B) an electronic record; or

6 (2) for—

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

9 (B) a remotely located individual.

10 (c) PRESUMPTION OF GENUINENESS.—In a deter-
11 mination of the validity of a notarization for the purposes
12 of subsection (a), the signature and title of an individual
13 performing a notarization shall be prima facie evidence in
14 any State court or judicial proceeding that the signature
15 is genuine and that the individual holds the designated
16 title.

17 (d) CONCLUSIVE EVIDENCE OF AUTHORITY.—In a
18 determination of the validity of a notarization for the pur-
19 poses of subsection (a), the signature and title of the fol-
20 lowing notarial officers of a State shall conclusively estab-
21 lish the authority of the officer to perform the notariza-
22 tion:

23 (1) A notary public of that State.

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

1 **SEC. 7. ELECTRONIC AND REMOTE NOTARIZATION NOT RE-**
 2 **QUIRED.**

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

- 5 (1) with respect to an electronic record;
- 6 (2) for a remotely located individual; or
- 7 (3) using a technology that the notary public
- 8 has not selected.

9 **SEC. 8. VALIDITY OF NOTARIZATIONS; RIGHTS OF AG-**
 10 **GRIEVED PERSONS NOT AFFECTED; STATE**
 11 **LAWS ON THE PRACTICE OF LAW NOT AF-**
 12 **FECTED.**

13 (a) **VALIDITY NOT AFFECTED.**—The failure of a no-
 14 tary public to meet a requirement under section 3 or 4
 15 in the performance of a notarization, or the failure of a
 16 notarization to conform to a requirement under section 3
 17 or 4, shall not invalidate or impair the validity or recogni-
 18 tion of the notarization.

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

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

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

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

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

14 **SEC. 9. EXCEPTION TO PREEMPTION.**

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

19 (1) either—

20 (A) constitutes an enactment or adoption
21 of the Revised Uniform Law on Notarial Acts,
22 as approved and recommended for enactment in
23 all the States by the National Conference of
24 Commissioners on Uniform State Laws in 2018
25 or the Revised Uniform Law on Notarial Acts,

1 as approved and recommended for enactment in
2 all the States by the National Conference of
3 Commissioners on Uniform State Laws in
4 2021, except that a modification to such Law
5 enacted or adopted by a State shall be pre-
6 empted to the extent such modification—

7 (i) is inconsistent with a provision of
8 section 3 or subsection (a) or (b) of section
9 4, as applicable; or

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

12 (B) specifies additional or alternative pro-
13 cedures or requirements for the performance of
14 notarizations with respect to electronic records
15 or for remotely located individuals, if those ad-
16 ditional or alternative procedures or require-
17 ments—

18 (i) are consistent with section 3 and
19 subsections (a) and (b) of section 4; and

20 (ii) do not accord greater legal effect
21 to the implementation or application of a
22 specific technology or technical specifica-
23 tion for performing those notarizations;
24 and

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

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

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

11 (a) STATE STANDARDS OF CARE; AUTHORITY OF
 12 STATE REGULATORY OFFICIALS.—Nothing in this Act
 13 may be construed to prevent a State, or a notarial regu-
 14 latory 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, or denying, refusing to renew, revoking, sus-
 21 pending, or imposing a condition on, a commission
 22 or appointment as a notary public;

23 (3) creating or designating a class or type of
 24 commission or appointment, or requiring an endorse-
 25 ment or other authorization to be received by a no-

1 tary public, as a condition on the authority to per-
2 form notarizations with respect to electronic records
3 or for remotely located individuals; or

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

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

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

19 (B) the commission or appointment of the no-
20 tary public is not of the class or type or the notary
21 public has not received the endorsement or other au-
22 thorization; or

23 (2) the notarial regulatory official of the notary
24 public’s State has prohibited the notary public from
25 performing the notarization as a sanction for a

4 If any provision of this Act or the application of such
5 provision to any person or circumstance is held to be in-
6 valid or unconstitutional, the remainder of this Act and
7 the application of the provisions thereof to other persons
8 or circumstances shall not be affected by that holding.

Attest: **CHERYL L. JOHNSON,**
Clerk.