

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 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020”.

SEC. 2. AUTHORIZATION TO PERFORM AND MINIMUM STANDARDS FOR ELECTRONIC NOTARIZATION.

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

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

(B) the electronic signature of the notary public, and all other information required to be included by other applicable

law, is attached to or logically associated with the signature or record; and

(2) such stamp or seal of office, electronic signature, or other information is securely bound to the electronic record in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic record evident.

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

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

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

(2) the notary public—

(A) has reasonably identified the individual by one or more of the following—

(i) personal knowledge of the individual;

(ii) at least two different types of processes or services by 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) is in the physical presence of either the notary public or the individual or (II) 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, if the credible witness has personal knowledge of the individual and 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 such recording as a notarial record during the term of the notary public's office, including renewals thereof, unless a law of the State requires a different period of retention, and if any laws of the State govern the content, retention, security, use, effect, and disclosure of such recording and any information contained therein such recording shall be subject thereto; and

(3) for 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 or a transaction substantially connected to the United States; and

(B) the notary public has no actual knowledge that the act of making the statement or signing the record is prohibited by the laws of the jurisdiction in which the individual is physically located.

(b) **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 occurs in or affects interstate commerce, that requirement is satisfied if the individual and the notary public are not in the physical presence of each other but can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization.

SEC. 4. RECOGNITION OF NOTARIZATIONS IN FEDERAL COURT.

Each Federal court shall recognize any notarization performed by a notary public commissioned under the laws of a State other than the State where the Federal court is located if—

(1) the notarization occurs in or affects interstate commerce; and

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

(B) in the case of an electronic record—

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

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

SEC. 5. RECOGNITION BY STATE OF NOTARIZATIONS

**PERFORMED UNDER AUTHORITY OF ANOTHER
STATE.**

Each State shall recognize as having the same effect under its laws as if performed by a notary public of such State any notarization performed by a notary public commissioned under the laws of any other State if—

(1)(A) the notarization was performed under or relates to a public Act, record, or judicial proceeding of the State in which the notary public is commissioned; or

(B) the notarization occurs in or affects interstate commerce; and

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

(B) in the case of an electronic record—

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

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

**SEC. 6. ELECTRONIC AND REMOTE NOTARIZATION NOT
REQUIRED.**

Nothing in this Act requires a notary public commissioned under the laws of a State to perform a notarization—

(1) with respect to an electronic record;

(2) for an individual not in the physical presence of the notary public; or

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

**SEC. 7. RIGHTS OF AGGRIEVED PERSONS NOT AFFECTED;
STATE LAWS ON THE PRACTICE OF LAW NOT
AFFECTED.**

(a) The validity and recognition of a notarization under this Act does not 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 addressed in this Act, including on the basis—

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

(A) execute or adopt on the record a tangible symbol; or

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

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

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

(b) Nothing in this Act affects a State law governing, authorizing, or prohibiting the practice of law.

SEC. 8. EXCEPTION TO PREEMPTION.

A State law is not affected by a provision of this Act to the extent that such law—

(1) 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 Act enacted by a State shall be preempted to the extent such modification is inconsistent with this Act or would not be permitted under paragraph (2) of this subsection; or

(2) specifies additional or alternative procedures or requirements for the performance of notarizations with respect to electronic records or for individuals not in the physical presence of a notary public at the time of the notarization, if—

(A) such additional or alternative procedures or requirements are consistent with this Act; and

(B) such additional or alternative procedures or requirements do not accord greater legal effect to the implementation or application of a specific technology or technical specification for performing such notarizations.

**SEC. 9. VALIDITY OF NOTARIZATIONS; STANDARD OF CARE;
SPECIAL NOTARIAL COMMISSIONS; SAVINGS
CLAUSE.**

(a) **VALIDITY NOT AFFECTED.**—The failure of a notary public to meet a requirement specified in this Act does not invalidate or impair the recognition of a notarization performed by the notary public.

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

(c) **STATE STANDARDS OF CARE; AUTHORITY OF STATE COMMISSIONING OFFICIALS.**—Nothing in this Act prevents a State or a commissioning official thereof from—

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

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

(3) creating or designating a class or type of commission, or requiring an endorsement or other authorization to be received by a notary public, as a condition on the authority to perform notarial acts with respect to electronic records or for individuals not in the physical presence of the notary public.

(d) SPECIAL COMMISSIONS CREATED BY A STATE.—A notary public commissioned under the laws of a State may not perform a notarization under sections 2 or 3 of this Act if—

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

(2) the notary public's commission is not of the class or type or the notary public has not received the endorsement or other authorization.

(e) SAVINGS CLAUSE.—This Act does not affect the validity a notarization performed before the effective date of this Act.

SEC. 10. SEVERABILITY.

If any provision of this Act or the application of such provision to any person or circumstance is held to be invalid or

unconstitutional, the remainder of this Act and the application of the provisions thereof to other persons or circumstances shall not be affected thereby.

SEC. 11. DEFINITIONS.

In this Act:

(1) COMMISSIONED.—The term “commissioned” includes appointed and licensed.

(2) ELECTRONIC.—The term “electronic” has the meaning given that term in section 106 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006).

(3) ELECTRONIC RECORD.—The term “electronic record” has the meaning given that term in section 106 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006).

(4) ELECTRONIC SIGNATURE.—The term “electronic signature” has the meaning given that term in section 106 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006).

(5) INFORMATION.—The term “information” has the meaning given that term in section 106 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006).

(6) LAW.—The term “law” includes any statute, regulation, or rule of law.

(7) NOTARIZATION.—The term “notarization” includes:

(A) any act—whether performed with respect to a tangible or electronic record and whether performed in an individual, official, or representative capacity—that a notary

public may perform under Federal law, including this Act, or under the laws of the State under which the notary public is commissioned; and

(B) any such act in which an individual making a statement or executing a record is not in the physical presence of the notary public but is able to communicate with the notary public simultaneously by sight and sound through an electronic device or process at the time of such act.

(8) PERSON.—The term “person” has the meaning given that term in section 106 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006).

(9) RECORD.—The term “record” has the meaning given that term in section 106 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006).

(10) REQUIREMENT.—The term “requirement” includes a duty, a standard of care, or a prohibition.

(11) SIMULTANEOUSLY.—The term “simultaneously” means substantially simultaneously and without unreasonable interruption or disconnection but includes reasonably short delays inherent or common in the method of communication.

(12) STAMP OR SEAL OF OFFICE.—The term “stamp or seal of office” means an image containing information as specified under the law of the State in which a notary public is commissioned, which is used by the notary public to authenticate the notarization of a record, and which may consist of a physical image or impression affixed to or embossed on a

tangible record or an electronic image attached to or logically associated with an electronic record.

(13) STATE.—The term “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, every territory or possession subject to the jurisdiction of the United States, and every federally recognized Indian tribe, and includes any executive, legislative, or judicial agency, court, department, board, office, clerk, recorder, register, commission, authority, institution, or instrumentality and any county, municipality, or other political subdivision thereof.