

SECURING AND ENABLING COMMERCE USING REMOTE
 AND ELECTRONIC NOTARIZATION ACT OF 2022

JULY 26, 2022.—Committed to the Committee of the Whole House on the State of
 the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce,
 submitted the following

R E P O R T

[To accompany H.R. 3962]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3962) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2022” or the “SECURE Notarization Act of 2022”.

SEC. 2. DEFINITIONS.

In this Act:

(1) **COMMUNICATION TECHNOLOGY.**—The term “communication technology”, with respect to a notarization, means an electronic device or process that allows the notary public performing the notarization, a remotely located individual, and (if applicable) a credible witness to communicate with each other simultaneously by sight and sound during the notarization.

(2) **ELECTRONIC; ELECTRONIC RECORD; ELECTRONIC SIGNATURE; INFORMATION; PERSON; RECORD.**—The terms “electronic”, “electronic record”, “electronic signature”, “information”, “person”, 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 statute, 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 perform a notarization under the laws of a State without a commission or appointment as a notary public.

(5) **NOTARIAL OFFICER’S STATE; NOTARY PUBLIC’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 “notarization”—

(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) **REMOVEDLY 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 individual by—

(I) using not fewer than 2 distinct 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 before the notary public and the remotely 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 in the same manner as specified for identification of a remotely located individual 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 governs the content, manner or place of retention, security, use, effect, or disclosure of the recording or any information contained in the recording, in accordance with that law; 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.
- (c) **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 interstate 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 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. 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 validity or 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 signature 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 authenticate or adopt a record; or
- (3) of fraud, forgery, mistake, misrepresentation, 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, authorizing, 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 subsection (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 or 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 2021, except that a modification to such Law enacted or adopted by a State shall be preempted to the extent such modification—

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

(ii) would not be permitted under subparagraph (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 requirements—

(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, suspending, 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 endorsement or other authorization to be received by a notary public, as a condition on the authority to perform 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 endorsement or other authorization to be received by a notary public, as a condition on the authority to perform notarizations with respect to electronic records or for remotely located individuals; and

(B) the commission or appointment of the notary public is not of the class or type or the notary public has not received the endorsement or other authorization; 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 invalid 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.

I. PURPOSE AND SUMMARY

H.R. 3962, the “Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021,” establishes nationwide standards and technical requirements for remote online notarization. This bill authorizes a notary public commissioned under state law to remotely notarize electronic records and perform notarizations for remotely-located individuals. The legislation also requires United States courts and states to recognize remote notarizations, including remote notarizations from notary publics commissioned in other states or U.S. territories. State laws that meet or exceed the minimum national standards and technical requirements of the bill will remain in effect.

II. BACKGROUND AND NEED FOR LEGISLATION

Notarization is an official process to attest that a document is authentic and is typically required for wills, marriage certificates, mortgages, and other documents concerning valuable assets.¹ While notarization has historically required a person to physically appear before a notary public, the coronavirus disease of 2019 (COVID-19) pandemic spurred several states to permit remote online notarizations to help ensure that such transactions could be completed. To date, dozens of states have enacted laws or taken emergency actions to permit remote online notarization.² In enacting this legislation, Congress is heeding a lesson learned from the pandemic by reducing friction in commerce and protecting consumers.

III. COMMITTEE HEARINGS

For the purposes of section 3(c) of rule XIII of the Rules of the House of Representatives, the following hearing was used to develop or consider H.R. 3962:

The Subcommittee on Consumer Protection and Commerce held a legislative hearing on May 26, 2022. The hearing was entitled, “Legislative Hearing to Protect Consumers and Strengthen the Economy.” The Subcommittee received testimony from the following witnesses:

- Kaitlin Kraska, Director of Federal Legislation, Government Relations, American Society for the Prevention of Cruelty to Animals;
- Julie Menin, Former Commissioner, New York City Department of Consumer Affairs;
- Hadley Heath Manning, Vice President for Policy, Independent Women’s Forum; Partner, Wiley Rein LLP;
- Michael O’Neal, Vice President—Corporate Underwriting, First American Title Insurance Company;
- Trista Hamsmith, Founder and Reese’s Mom, Reese’s Purpose;
- Eric D. Hagopian, CEO and President, Pilot Precision Products; and

¹National Notary Association, *What Is Notarization?* (www.nationalnotary.org/knowledge-center/about-notaries/what-is-notarization) (accessed May 23, 2022).

²DLA Piper, *[UPDATED] Coronavirus: Federal and State Governments Work Quickly to Enable Remote Online Notarization to Meet Global Crisis* (Aug. 25, 2021) (www.dlapiper.com/en-us/insights/publications/2020/03/coronavirus-federal-and-state-governments-work-quickly-to-enable-remote-online-notarization/#:~:text=Currently%2C%2034%20states%20have%20enacted,%2C%20Ohio%2C%20Oklahoma%2C%20Oregon%2C).

- Tori Barnes, Executive Vice President, Public Affairs and Policy, U.S. Travel Association.

IV. COMMITTEE CONSIDERATION

H.R. 3962, the “Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021,” was introduced on June 17, 2021, by Representative Madeline Dean (D–PA) and 32 original bipartisan cosponsors and referred to the Committee on Energy and Commerce. Subsequently, on June 18, 2021, the bill was referred to the Subcommittee on Consumer Protection and Commerce. A legislative hearing was held on May 26, 2022.

On June 23, 2022, the Subcommittee on Consumer Protection and Commerce met in open markup session, pursuant to notice, to consider H.R. 3962 and seven other bills. No amendments were offered during consideration of the bill. Upon conclusion of consideration of the bill, the Subcommittee on Consumer Protection and Commerce agreed to report the bill favorably to the full Committee, without amendment, by a roll call vote of 22 yeas to 0 nays.

On July 20, 2022, the full Committee met in open markup session, pursuant to notice, to consider H.R. 3962 and five other bills. During consideration of the bill, an amendment in the nature of a substitute (AINS), offered by Representative Armstrong (R–ND), was agreed to by a voice vote. Upon conclusion of consideration of the bill, the full Committee agreed to a motion on final passage offered by Representative Pallone, Chairman of the Committee, to order H.R. 3962 reported favorably to the House, amended, by a roll call vote of 56 yeas to 0 nays.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there were two record votes taken on H.R. 3962, including a motion by Mr. Pallone ordering H.R. 3962 favorably reported to the House, amended. The motion on final passage of the bill was approved by a record vote of 56 yeas to 0 nays. The following are the record votes taken during Committee consideration, including the names of those members voting for and against:

Committee on Energy and Commerce
117th Congress

Subcommittee on Consumer Protection and Commerce

(ratio: 14-10)

ROLL CALL VOTE #5

Bill: **H.R. 3962**, the “Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021”

Motion: A motion by Ms. Schakowsky of Illinois to order **H.R. 3962** transmitted favorably to the full Committee, without amendment.

Disposition: **AGREED TO** by a roll call vote of 22 yeas to 0 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Ms. Schakowsky	X			Mr. Bilirakis	X		
Mr. Rush	X			Mr. Upton	X		
Ms. Castor	X			Mr. Latta	X		
Ms. Trahan	X			Mr. Guthrie	X		
Mr. McNerney	X			Mr. Bucshon	X		
Ms. Clarke	X			Mr. Dunn	X		
Mr. Cárdenas	X			Ms. Lesko	X		
Mrs. Dingell	X			Mr. Pence			
Ms. Kelly	X			Mr. Armstrong	X		
Mr. Soto	X			Mrs. Rodgers	X		
Ms. Rice	X						
Ms. Craig							
Ms. Fletcher	X						
Mr. Pallone	X						

Committee on Energy and Commerce
117th Congress

Full Committee
(ratio: 32-26)

ROLL CALL VOTE #138

Bill: **H.R. 3962**, the “Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021”

Vote: Final Passage

Disposition: **AGREED TO** by a roll call vote of 56 yeas to 0 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Pallone	X			Mrs. Rodgers	X		
Mr. Rush	X			Mr. Upton	X		
Ms. Eshoo	X			Mr. Burgess	X		
Ms. DeGette	X			Mr. Scalise			
Mr. Doyle	X			Mr. Latta	X		
Ms. Schakowsky	X			Mr. Guthrie	X		
Mr. Butterfield	X			Mr. McKinley	X		
Ms. Matsui	X			Mr. Kinzinger			
Ms. Castor	X			Mr. Griffith	X		
Mr. Sarbanes	X			Mr. Bilirakis	X		
Mr. McNerney	X			Mr. Johnson	X		
Mr. Welch	X			Mr. Long	X		
Mr. Tonko	X			Mr. Bucshon	X		
Ms. Clarke	X			Mr. Mullin	X		
Mr. Schrader	X			Mr. Hudson	X		
Mr. Cárdenas	X			Mr. Walberg	X		
Mr. Ruiz	X			Mr. Carter	X		
Mr. Peters	X			Mr. Duncan	X		
Mrs. Dingell	X			Mr. Palmer	X		
Mr. Veasey	X			Mr. Dunn	X		
Ms. Kuster	X			Mr. Curtis	X		
Ms. Kelly	X			Ms. Lesko	X		
Ms. Barragán	X			Mr. Pence	X		
Mr. McEachin	X			Mr. Crenshaw	X		
Ms. Blunt Rochester	X			Mr. Joyce	X		
Mr. Soto	X			Mr. Armstrong	X		
Mr. O’Halleran	X						
Ms. Rice	X						
Ms. Craig	X						
Ms. Schrier	X						
Ms. Trahan	X						
Ms. Fletcher	X						

07/20/22

VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portion of the report.

VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

VIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

IX. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to establish minimum standards for electronic notarizations and remote notarizations, authorize notaries public to perform such notarizations, and require any federal court and any state to recognize notarizations performed by a notarial officer of any state.

X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 3962 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

XI. COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

XII. EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 3962 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIII. ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

XIV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XV. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates that the short title may be cited as the “Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021.”

Sec. 2. Definitions

Section 2 defines key terms of the bill.

Sec. 3. Authorization to perform and minimum standards for electronic notarization

Subsection (a) authorizes a notary public to perform an electronic notarization.

Subsection (b) establishes requirements for such notarization, including requirements that the electronic signature of the notary public and all applicable information be bound to the electronic record in a manner that prevents subsequent change or modification to the electronic record.

Sec. 4. Authorization to perform and minimum standards for remote notarization

Subsection (a) permits a notary public to perform notarizations for a remotely located individual.

Subsection (b) establishes requirements for remote notarizations, including requirements for reasonably identifying the remote individual with the use of communication technology or by other means, creating an audio and visual recording of the notarization, and maintaining the record for a specified period of time.

Subsection (c) specifies that remote notarizations performed in accordance with this section shall satisfy the requirements of state or federal law requiring an individual to be physically present at the time of the notary.

Sec. 5. Recognition of notarizations in Federal court

Section 5 requires that notaries performed under this Act be recognized as valid in any court in the United States under state or federal law.

Sec. 6. Recognition by State of notarizations performed under authority of another State

Section 6 states that each State shall recognize as valid a notarization performed by a notarial officer of any other State if certain requirements are met.

Sec. 7. Electronic and remote notarization not required

Section 7 clarifies that nothing in this Act may be construed to require a notary public to perform an electronic or remote notarization.

Sec. 8. Validity of notarizations; rights of aggrieved persons not affected; State laws on the practice of law not affected

Subsection (a) states that if a notary public fails to meet the requirements under Sections 3 and 4, the validity of the notarization shall not be impaired.

Subsection (b) clarifies that aggrieved individuals may seek remedies under state or federal law to invalidate a record or transaction that is subject to a notarization.

Subsection (c) clarifies that nothing in this Act may be construed to affect a state law governing, authoring, or prohibiting the practice of law.

Sec. 9. Exception to preemption

Section 9 states that a state may modify, limit, or supersede a provision of Section 3, or subsections (a) or (b) of Section 4 if the state law constitutes an enactment or adoption of the Revised Uniform Law on Notarial Acts so long as they are not inconsistent with a provision of section 3 or subsections (a) or (b) of section 4. This section also permits a state to specify additional or alternative procedures or requirements for the performance of electronic or remote notarizations so long as they are consistent with a provision of section 3 or subsections (a) or (b) of section 4 and do not accord greater legal effect to the implementation or application of a specific technology or technical specification for performing those notarizations. Such state laws must require 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.

Sec. 10. Standard of care; special notarial commissions

Subsection (a) clarifies that this Act does not prevent a state from adopting requirements under this Act as a standard of care for notarizations under their state law, establishing requirements and qualifications for, or denying, refusing to renew, revoking, suspending, or imposing a condition on, a commission or appointment as a notary public, creating or designating a class or type of commission or appointment, or requiring an endorsement or other authorization to be received by a notary public, as a condition on the authority to perform notarizations with respect to electronic records or for remotely located individuals, or 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.

Subsection (b) prohibits a notary public from performing a notarization under section 3 or 4 if the notary public's state has enacted a law that creates or designates a class or type of commission or appointment, or requires authorization to be received by a notary public, as a condition on the authority to perform a notary for such electronic records or for remotely located individuals or 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

Section 11 states that if any provision of this Act is held to be invalid or unconstitutional, the remainder of this Act shall not be affected.

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

There are no changes to existing law made by the bill, H.R. 3962.

