

117TH CONGRESS
1ST SESSION

S. 1625

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 SENATE OF THE UNITED STATES

MAY 13, 2021

Mr. CRAMER (for himself and Mr. WARNER) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To authorize notaries public to perform, and to establish minimum standards for, electronic notarizations and remote notarizations that occur in or affect interstate commerce, to require any Federal court to recognize notarizations performed by a notarial officer of any State, to require any State to recognize notarizations performed by a notarial officer of any other State when the notarization was performed under or relates to a public Act, record, or judicial proceeding of the notarial officer's State or when the notarization occurs in or affects interstate commerce, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securing and Enabling
 5 Commerce Using Remote and Electronic Notarization Act
 6 of 2021”.

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 and a remotely located individual to communicate
 14 with each other simultaneously by sight and sound
 15 during the notarization.

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

24 (3) **LAW.**—The term “law” includes any stat-
 25 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 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—

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

3 (II) a remotely located individual.

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

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

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

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

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

24 (A) an electronic signature; or

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

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

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

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

13 (13) STATE.—The term “State”—

14 (A) means—

15 (i) any State of the United States;

16 (ii) the District of Columbia;

17 (iii) the Commonwealth of Puerto
18 Rico;

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

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

23 (B) includes any executive, legislative, or
24 judicial agency, court, department, board, of-
25 fice, clerk, recorder, register, registrar, commis-

sion, authority, institution, instrumentality,
 county, municipality, or other political subdivi-
 sion of an entity described in any of clauses (i)
 through (v) of subparagraph (A).

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

(a) AUTHORIZATION.—Unless prohibited under sec-
 tion 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 NOTARIZA-
 TION.—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 pub-
 lic, 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 informa-
 tion 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.

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 under clause (i)
19 or subclause (I) of this clause;

20 (B) either directly or through an agent—

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

24 (ii) notwithstanding any resignation
25 from, or revocation, suspension, or termi-

1 nation of, the notary public's commission
 2 or appointment, retain the recording cre-
 3 ated under clause (i) as a notarial
 4 record—

5 (I) for a period of not less
 6 than—

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

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

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

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

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

1 contained in the recording, in accord-
2 ance with those laws; and

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

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

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

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

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

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

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

8 (A) the record shall—

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

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

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

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

1 at the time of a notarization, that requirement shall be
 2 considered to be satisfied if—

3 (1) the individual—

4 (A) is a remotely located individual; and

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

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

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

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

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

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

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

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

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

6 (A) with respect to—

7 (i) a tangible record; or

8 (ii) an electronic record; or

9 (B) for—

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

12 (ii) a remotely located individual.

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

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

1 (1) A notary public of that State.

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

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

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

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

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

16 (B) the notarization occurs in or affects inter-
17 state commerce.

18 (b) LEGAL EFFECT OF RECOGNIZED NOTARIZA-
19 TION.—A notarization recognized under subsection (a)
20 shall have the same effect under the laws of the recog-
21 nizing State as if that notarization was validly performed
22 by a notarial officer of the recognizing State, without re-
23 gard to whether the notarization was performed—

24 (1) with respect to—

25 (A) a tangible record; or

1 (B) an electronic record; or

2 (2) for—

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

5 (B) a remotely located individual.

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

13 (d) CONCLUSIVE EVIDENCE OF AUTHORITY.—In a
14 determination of the validity of a notarization for the pur-
15 poses of subsection (a), the signature and title of the fol-
16 lowing notarial officers of a State conclusively establish
17 the authority of the officer to perform the notarization:

18 (1) A notary public of that State.

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

21 **SEC. 7. ELECTRONIC AND REMOTE NOTARIZATION NOT RE-**
22 **QUIRED.**

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

25 (1) with respect to an electronic record;

- 1 (2) for a remotely located individual; or
 2 (3) using a technology that the notary public
 3 has not selected.

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

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

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

- 21 (1) that a person did not, with present intent
 22 to authenticate or adopt a record, execute a signa-
 23 ture on the record;
 24 (2) that an individual was incompetent, lacked
 25 authority or capacity to authenticate or adopt a

1 record, or did not knowingly and voluntarily authen-
 2 ticate or adopt a record; or

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

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

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

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

14 (1) either—

15 (A) constitutes an enactment or adoption
 16 of the Revised Uniform Law on Notarial Acts,
 17 as approved and recommended for enactment in
 18 all the States by the National Conference of
 19 Commissioners on Uniform State Laws in
 20 2018, except that a modification to such Law
 21 enacted or adopted by a State shall be pre-
 22 empted to the extent such modification—

23 (i) is inconsistent with a provision of
 24 section 3 or subsections (a) or (b) of sec-
 25 tion 4, as applicable; or

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

3 (B) specifies additional or alternative pro-
 4 cedures or requirements for the performance of
 5 notarizations with respect to electronic records
 6 or for remotely located individuals, if those ad-
 7 ditional or alternative procedures or require-
 8 ments—

9 (i) are consistent with section 3 and
 10 subsections (a) and (b) of section 4; and

11 (ii) do not accord greater legal effect
 12 to the implementation or application of a
 13 specific technology or technical specifica-
 14 tion for performing those notarizations;
 15 and

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

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

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

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

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

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

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

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

25 (b) SPECIAL COMMISSIONS OR AUTHORIZATIONS
 26 CREATED BY A STATE; SANCTION FOR BREACH OR OFFI-

1 CIAL MISCONDUCT.—A notary public may not perform a
 2 notarization under section 3 or 4 if—

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

10 (B) the commission or appointment of the no-
 11 tary public is not of the class or type or the notary
 12 public has not received the endorsement or other au-
 13 thorization; or

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

19 **SEC. 11. SEVERABILITY.**

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

○