

116TH CONGRESS
2D SESSION

S. 3533

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.

IN THE SENATE OF THE UNITED STATES

MARCH 18, 2020

Mr. CRAMER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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.

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 2020”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) COMMISSIONED.—The term “commis-
 10 sioned”, with respect to a notary public, includes a
 11 notary public who is appointed and licensed.

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

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

22 (4) NOTARIZATION.—The term “notarization”
 23 includes any act—

(A) that a notary public may perform under Federal law, including this Act, or under the laws of the State in which the notary public is commissioned, without regard to whether the notary public performs the act—

(i) with respect to a tangible or electronic record; or

(ii) in an individual, official, or representative capacity; and

(B) in which an individual making a statement or executing a record is not in the physical presence of a 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 the act.

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

(6) 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

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

4 (7) STAMP OR SEAL OF OFFICE.—The term
 5 “stamp or seal of office” means an image that—

6 (A) contains information as specified under
 7 the law of the State in which a notary public
 8 is commissioned;

9 (B) a notary public uses to authenticate
 10 the notarization of a record; and

11 (C) may consist of—

12 (i) a physical image or impression af-
 13 fixed to or embossed on a tangible record;
 14 or

15 (ii) an electronic image attached to, or
 16 logically associated with, an electronic
 17 record.

18 (8) STATE.—The term “State”—

19 (A) means—

20 (i) any State of the United States;

21 (ii) the District of Columbia;

22 (iii) the Commonwealth of Puerto
 23 Rico;

24 (iv) any territory or possession of the
 25 United States; and

1 (v) any federally recognized Indian
 2 tribe; and

3 (B) includes any executive, legislative, or
 4 judicial agency, court, department, board, of-
 5 fice, clerk, recorder, register, commission, au-
 6 thority, institution, instrumentality, county,
 7 municipality, or other political subdivision of an
 8 entity described in any of clauses (i) through
 9 (v) of subparagraph (A).

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

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

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

19 (B) the electronic signature of the notary pub-
 20 lic, and all other information required to be included
 21 under other applicable law, is attached to or logically
 22 associated with the signature or record; and

23 (2) the stamp or seal of office, electronic signa-
 24 ture, or other information described in paragraph
 25 (1) is securely bound to the electronic record in a

1 manner that is capable of independent verification
2 and renders any subsequent change or modification
3 to the electronic record evident.

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

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

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

15 (2) the notary public—

16 (A) has reasonably identified the individual
17 through—

18 (i) personal knowledge of the indi-
19 vidual;

20 (ii) not fewer than 2 distinct types of
21 processes or services through which a third
22 person provides a means to verify the iden-
23 tity of the individual through a review of
24 public or private data sources; or

1 (iii) oath or affirmation of a credible
2 witness who—

3 (I)(aa) is in the physical presence
4 of the notary public or the individual;
5 or

6 (bb) is able to communicate with
7 the notary public and the individual
8 simultaneously by sight and sound
9 through an electronic device or proc-
10 ess at the time of the notarization;

11 (II) has personal knowledge of
12 the individual; and

13 (III) has been reasonably identi-
14 fied by the notary public under clause
15 (i) or (ii); and

16 (B) either directly or through an agent—

17 (i) creates an audio and visual record-
18 ing of the performance of the notarization;
19 and

20 (ii) retains the recording created
21 under clause (i)—

22 (I) as a notarial record during
23 the term of the notary public's office,
24 including renewals of that term, un-

1 less a law of the State requires a dif-
2 ferent period of retention; and

3 (II) if any laws of the State gov-
4 ern the content, retention, security,
5 use, effect, and disclosure of that re-
6 cording and any information con-
7 tained in the recording, in accordance
8 with those laws; and

9 (3) with respect to an individual physically lo-
10 cated outside the geographic boundaries of a State
11 or other location subject to the jurisdiction of the
12 United States at the time of the notarization—

13 (A) the record—

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

19 (ii) involves property located in the
20 territorial jurisdiction of the United States
21 or a transaction substantially connected to
22 the United States; and

23 (B) the notary public has no actual knowl-
24 edge that the act of making the statement or
25 signing the record is prohibited by the laws of

1 the jurisdiction in which the individual is phys-
2 ically located.

3 (b) PERSONAL APPEARANCE SATISFIED.—If a State
4 or Federal law requires an individual to appear personally
5 before or be in the physical presence of a notary public
6 at the time of a notarization that occurs in or affects inter-
7 state commerce, that requirement is satisfied if the indi-
8 vidual and the notary public are not in the physical pres-
9 ence of each other but can communicate simultaneously
10 by sight and sound through an electronic device or process
11 at the time of the notarization.

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

14 Each court of the United States shall recognize any
15 notarization performed by a notary public commissioned
16 under the laws of a State other than the State in which
17 the court is located if—

18 (1) the notarization occurs in or affects inter-
19 state commerce; and

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

22 (B) in the case of an electronic record—

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

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

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

9 Each State shall recognize as having the same effect
 10 under the laws of that State as if performed by a notary
 11 public of that State any notarization performed by a no-
 12 tary public commissioned under the laws of any other
 13 State if—

14 (1)(A) the notarization was performed under or
 15 relates to a public act, record, or judicial proceeding
 16 of the State in which the notary public is commis-
 17 sioned; or

18 (B) the notarization occurs in or affects inter-
 19 state commerce; and

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

22 (B) in the case of an electronic record—

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

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

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

8 Nothing in this Act may be construed to require a
9 notary public commissioned under the laws of a State to
10 perform a notarization—

- 11 (1) with respect to an electronic record;
12 (2) for an individual not in the physical pres-
13 ence of the notary public; or
14 (3) using a technology that the notary public
15 has not selected.

16 **SEC. 8. RIGHTS OF AGGRIEVED PERSONS NOT AFFECTED;**
17 **STATE LAWS ON THE PRACTICE OF LAW NOT**
18 **AFFECTED.**

19 (a) IN GENERAL.—The validity and recognition of a
20 notarization under this Act may not be construed to pre-
21 vent an aggrieved person from seeking to invalidate a
22 record or transaction that is the subject of a notarization
23 or from seeking other remedies based on State or Federal
24 law other than this Act for any reason not addressed in
25 this Act, including on the basis—

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

3 (A) execute or adopt on the record a tan-
4 gible symbol; or

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

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

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

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

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

17 A State law shall not be affected by a provision of
18 section 3 or 4 of this Act to the extent that the law—

19 (1) constitutes an enactment or adoption of the
20 Revised Uniform Law on Notarial Acts, as approved
21 and recommended for enactment in all States by the
22 National Conference of Commissioners on Uniform
23 State Laws in 2018, except that a modification to
24 such Act enacted by a State shall be preempted to
25 the extent the modification is inconsistent with this

1 Act or would not be permitted under paragraph (2);
 2 or

3 (2) specifies additional or alternative procedures
 4 or requirements for the performance of notarizations
 5 with respect to electronic records or for individuals
 6 not in the physical presence of a notary public at the
 7 time of the notarization, if those additional or alter-
 8 native procedures or requirements—

9 (A) are consistent with this Act; and

10 (B) do not accord greater legal effect to
 11 the implementation or application of a specific
 12 technology or technical specification for per-
 13 forming those notarizations.

14 **SEC. 10. VALIDITY OF NOTARIZATIONS; STANDARD OF**
 15 **CARE; SPECIAL NOTARIAL COMMISSIONS;**
 16 **SAVINGS CLAUSE.**

17 (a) **VALIDITY NOT AFFECTED.**—The failure of a no-
 18 tary public to meet a requirement specified in this Act
 19 shall not invalidate or impair the recognition of a notariza-
 20 tion performed by the notary public.

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

24 (c) **STATE STANDARDS OF CARE; AUTHORITY OF**
 25 **STATE COMMISSIONING OFFICIALS.**—Nothing in this Act

1 may be construed to prevent a State, or a commissioning
2 official of a State, from—

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

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

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

17 (d) SPECIAL COMMISSIONS CREATED BY A STATE.—
18 A notary public commissioned under the laws of a State
19 may not perform a notarization under section 3 or 4 of
20 this Act if—

21 (1) the State has enacted a law that creates or
22 designates a class or type of commission, or requires
23 an endorsement or other authorization to be received
24 by a notary public, as a condition on the authority
25 to perform notarial acts with respect to electronic

1 records or for individuals not in the physical pres-
2 ence of the notary public; and

3 (2) the commission of the notary public is not
4 of the class or type or the notary public has not re-
5 ceived the endorsement or other authorization.

6 (e) SAVINGS CLAUSE.—This Act shall not affect the
7 validity of a notarization performed before the date of en-
8 actment of this Act.

9 **SEC. 11. SEVERABILITY.**

10 If any provision of this Act or the application of such
11 a provision to any person or circumstance is held to be
12 invalid or unconstitutional, the remainder of this Act and
13 the application of the provisions of this Act to other per-
14 sons or circumstances shall not be affected by that hold-
15 ing.

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