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
Be it enacted by the Senate and House of Representa-
tives 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. DEFINITIONS.

In this Act:

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

(2) ELECTRONIC; ELECTRONIC RECORD; ELEC-
TRONIC SIGNATURE; INFORMATION; PERSON;
RECORD.—The terms “electronic”, “electronic
record”, “electronic signature”, “information”, “per-
son”, 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 stat-
ute, regulation, or rule.

(4) NOTARIZATION.—The term “notarization”
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 elec-
tronic record; or

(ii) in an individual, official, or rep-
resentative capacity; and

(B) in which an individual making a state-
ment or executing a record is not in the phys-
ical presence of a notary public but is able to
communicate with the notary public simulta-
aneously by sight and sound through an elec-
tronic device or process at the time of the act.

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

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

(A) means that each party communicates
substantially simultaneously and without unre-
asonable interruption or disconnection; and
(B) includes a reasonably short delay that
is inherent in, or common with respect to, the
method used for the communication.

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

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

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

(C) may consist of—

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

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

(8) 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, 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 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, 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 under other applicable law, is attached to or logically associated with the signature or record; and

(2) the stamp or seal of office, electronic signature, or other information described in paragraph (1) 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. 4. 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, 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
through—

(i) personal knowledge of the indi-
vidual;

(ii) not fewer than 2 distinct types of
processes or services through which a third
person provides a means to verify the iden-
tity of the individual through a review of
public or private data sources; or
(iii) oath or affirmation of a credible witness who—

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

(bb) 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;

(II) has personal knowledge of the individual; and

(III) 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 the recording created under clause (i)—

(I) as a notarial record during the term of the notary public’s office, including renewals of that term, un-
less a law of the State requires a different period of retention; and

(II) if any laws of the State govern the content, retention, security, use, effect, and disclosure of that recording and any information contained in the recording, in accordance with those laws; and

(3) with respect to 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. 5. RECOGNITION OF NOTARIZATIONS IN FEDERAL COURT.

Each court of the United States shall recognize any notarization performed by a notary public commissioned under the laws of a State other than the State in which the 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 under other applicable law, is attached to or logically associated with the electronic record.

SEC. 6. RECOGNITION BY STATE OF NOTARIZATIONS PERFORMED UNDER AUTHORITY OF ANOTHER STATE.

Each State shall recognize as having the same effect under the laws of that State as if performed by a notary public of that 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. 7. ELECTRONIC AND REMOTE NOTARIZATION NOT RE-
QUIRED.

Nothing in this Act may be construed to require 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 pres-
ence of the notary public; or

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

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

(a) IN GENERAL.—The validity and recognition of a
notarization under this Act may not be construed to pre-
vent 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 tan-
gible 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, misrepresenta-
tion, impersonation, duress, undue influence, or
other invalidating cause.

(b) Rule of Construction.—Nothing in this Act
may be construed to affect a State law governing, author-
izing, or prohibiting the practice of law.

SEC. 9. EXCEPTION TO PREEMPTION.

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

(1) constitutes an enactment or adoption of the
Revised Uniform Law on Notarial Acts, as approved
and recommended for enactment in all 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 the modification is inconsistent with this
Act or would not be permitted under paragraph (2); 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 those additional or alternative procedures or requirements—

(A) are consistent with this Act; and

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

SEC. 10. 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 shall not invalidate or impair the recognition of a notarization performed by the notary public.

(b) RULE OF CONSTRUCTION.—This Act may 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
may be construed to prevent a State, or a commissioning 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 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 section 3 or 4 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 commission of the notary public is not of the class or type or the notary public has not received the endorsement or other authorization.

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

SEC. 11. SEVERABILITY.

If any provision of this Act or the application of such a provision to any person or circumstance is held to be invalid or unconstitutional, the remainder of this Act and the application of the provisions of this Act to other persons or circumstances shall not be affected by that holding.