



Date: June 16, 2021

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Sent via electronic mail to: reynolds@sso.org

Re: SECURE Notarization Act

As a follow up to the recent reintroduction of the Securing and Enabling Commerce Using Remote and Electronic Notarization Act (SECURE Notarization Act) in Congress, we wanted to provide you with an outline of the reasons we support this legislation and address some of the frequently asked questions about the bill. First and foremost, the SECURE Notarization Act creates the foundation for strong consumer protections when it comes to the use of remote notarizations. Additionally, the SECURE Notarization Act was drafted to complement state notarization laws and provide benefits to every state, regardless of where they are in the process of approving use of Remote Online Notarization (RON). As a result, we hope there will be broad support from Secretaries of State for this legislative effort and that NASS will endorse the SECURE Notarization Act, which is consistent with the framework outlined in the NASS Standards for Electronic Notarization.

We appreciate the leadership NASS has provided regarding the regulation and use of remote notarizations. Secretaries of State have a vital role to play in ensuring modernization of the notarial process results in practices that are safe for consumers and guard against fraud.

The COVID-19 crisis highlighted the need for expanded access options when it comes to notarial services. As a result, lawmakers at both the state and federal levels are actively promoting bills to make RON safe, accessible, and viable for use on all types of documents. We support these complementary legislative efforts.

The SECURE Notarization Act was drafted to function in harmony with the Uniform Law Commission's Revised Uniform Law on Notarial Acts (RULONA 2018). The SECURE Notarization Act complements RULONA 2018 in much the same way the Electronic Signatures in Global and National Commerce (ESIGN) Act operates in tandem with the Uniform Electronic Transaction Act (UETA) to create legal certainty and a common framework around the use of electronic signatures.

The SEUCRE Notarization Act takes a three-prong approach to authorizing and expanding the use of RON.

- ✓ First, it permits immediate nationwide use of RON.
- ✓ Second, it creates national minimum standards for the use of RON.
- ✓ Finally, it provides certainty for interstate recognition of RON.

These three facets of the SECURE Notarization Act work together to create legal certainty for the use of RON, while promoting a uniform framework that will foster broader adoption of the technology.

Principally, it is important to note the SECURE Notarization Act is designed to be permissive. Nothing in the SECURE Notarization Act requires additional action or steps to be taken by any state elected official. That said, if state lawmakers or regulators set forth rules regarding the use of RON that encompass the national minimum standards found in the SECURE Notarization Act, state law will supersede.

Given the notarial process has traditionally been regulated at the state level, there are questions regarding the interplay between the SECURE Notarization Act and state law. The Q&As below address the most commonly asked questions regarding the SECURE Notarization Act.

Q: Does the SECURE Notarization Act interfere with states' ability to enact and enforce their own notary laws?

- A. The SECURE Notarization act does not interfere with a state's sovereignty to authorize or regulate RON. The legislation allows states the flexibility to add additional requirements through legislation or regulation. States can set higher standards than the national minimum framework found in the SECURE Notarization Act.

Additionally, states may regulate any other aspect of the conduct or business practices of notaries. Beyond standards for remote notarization, state laws may include other notarial requirements related to commissioning, use of a standard stamp or certificate, journaling, insurance, and bonding, etc. The SECURE Notarization Act does not address notarial requirements beyond the minimum standards for consumer protections in a remote notarization because creating a federal standard around these types of requirements, which vary significantly from state-to-state, would result in the preemption of many states notarial laws. Instead, the SECURE Notarization Act was narrowly crafted to address remote notarization standards and was intentionally designed to complement state notarial laws. As a result, the SECURE Notarization Act does not preempt a state's unique notarial laws as it relates to in person notarizations or additional standards for remote notarizations, all of which will still be applicable.

Q: Is the SEUCRE Notarization Act necessary after the COVID-19 pandemic ends?

- A. The SECURE Notarization Act has benefits beyond the COVID-19 pandemic. The legislation allows for safer transactions via physical distancing, which pandemic or not, is a useful tool. Even as states reopen, vulnerable populations will need options that minimize or eliminate contact with others to protect their health.

Additionally, RON improves access to notary services and thus financial services in underserved and unbanked communities. This helps communities where notary services are not readily available because of the absence of traditional providers like bank branches or lawyers. RON provides scheduling flexibilities, so consumers are not adversely impacted by having to take time off from work or traveling long distances to sign documents. In addition, RON helps address the “digital divide” by making some services available to those with only a cell phone.

According to an American Land Title Association survey of vendors that offer RON technology at the end of 2020, RON usage increased 547 percent when compared to 2019. In recent years, RON use has increased due to the pandemic, expanded consumer awareness, the growth of e-commerce, and the convenience of digital transactions.

Q: Why is nationwide use of RON necessary?

- A. The SECURE Notarization Act creates nation-wide consumer choice. In addition to providing all consumers access to modern notarization options, the SECURE Notarization Act creates a level playing field by giving notaries across the country the ability to offer remote notarizations. However, a notary must be commissioned by a state in order to utilize the authority provided under the SECURE Notarization Act to conduct a remote online notarization.

RON is a convenient alternative to traditional in-person notarization for all consumers, but it is especially beneficial to consumers who are unable to easily travel to access notarial services. Examples include active-duty military stationed overseas, child and elder caregivers, sick or elderly persons, and those exercising social distancing measures.

Q: Why is interstate recognition of RON needed?

- A. State laws related to the recognition of notarizations from other states were written decades before the internet was invented. The SECURE Notarization Act ensures these more modern types of notarization are considered the legal equivalent to traditional paper notarizations.

Q: What are the minimum national standards included in the SECURE Notarization Act?

- A. The SECURE Notarization Act requires multi-factor authentication (i.e. knowledge-based authentication and credential analysis), use of tamper-evident technology and an audio-visual recording of the notarial act.

Q: What if my state already has a RON law?

- A. If your state has already passed a RON law that meets the minimum national standards, you will not be impacted by the SECURE Notarization Act.

Q: Why should I support SECURE if my state already allows RON?

- A. The SECURE Notarization Act ensures any remote notarization, being relied on for any type of transaction in any state, is subject to the same minimum standards. This provides nationwide consumer protections and vital anti-fraud measures.

Additionally, the SECURE Notarization Act creates certainty around questions of interstate recognition, giving notaries the confidence to remotely notarize documents for use in any type of transaction anywhere in the United States.

Q: What if my state passed a RON law, but has not promulgated regulations yet?

- A. The SECURE Notarization Act would be in effect in your state immediately. Once regulations are promulgated, your state law will supersede the SECURE Notarization Act, as long as national minimum standards are met.

Q: What if my state is in the process of passing a RON law?

- A. You should continue your state legislative efforts to pass a RON law. The SECURE Notarization Act will be in place so notaries can immediately use RON. Once a state law, meeting national minimum standards, is passed and regulations are promulgated, that state law will supersede the SECURE Notarization Act.

Q: What if my state law is not consistent with this federal law?

- A. If your state law does not meet the national minimum standards, notaries will have additional duties to comply with the federal law.

Should you or your staff have any questions, please do not hesitate to contact Elizabeth Blosser at ALTA (eblosser@alta.org) or Kobie Pruitt at MBA (kpruitt@mba.org).

Respectfully,
American Land Title Association
Mortgage Bankers Association