

# Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020 (SECURE Notarization Act)

## Section-by-Section

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### **Section 1: Short Title**

### **Section 2: Authorization to Perform and Minimum Standards for Electronic Notarization**

All state-commissioned notaries are authorized to perform electronic notarizations in support of interstate commerce. When doing so, notaries must follow minimum national standards.

These standards require notaries to “tamper seal” the documents using well-established encryption methods, enabling independent verification that the document remains unaltered. The standards mirror the requirements of the Uniform Law Commission’s model law, the Revised Uniform Law on Notarial Acts (“RULONA”).

### **Section 3: Authorization to Perform and Minimum Standards for Remote Notarization**

All state-commissioned notaries are authorized to perform remote notarizations in support of interstate commerce. When a remote notarization is performed, the notary and document signer communicate by simultaneous, audio-visual, electronic means (*i.e.*, via real-time internet audio-video connection). When doing so, notaries must follow minimum national standards that provide strong protections against fraud.

In addition to tamper-sealing the documents as noted above in Section 2, these standards further require notaries to: (1) use a multi-factor authentication process to identify document signers not personally known or attested to the notary; (2) create an audio-visual recording of the notarization; and (3) only notarize documents relating to courts or public entities or for property or transactions substantially connected to U.S. territorial jurisdiction. The standards mirror the requirements of RULONA.

The recording is retained as a notarial record and is subject to any State laws governing its content, retention, security, use, effect, and disclosure of the record and information contained therein. The recording provides an additional layer of fraud deterrence and legal proof that traditional wet-ink paper notarizations lack.

A remote notarization performed under Federal or State law will satisfy any traditional “personal appearance” or “physical presence” requirement for notarizations, providing legal certainty for the validity of remote notarizations.

### **Section 4: Recognition of Notarizations in Federal Court**

Each Federal court located in a State or U.S. territory will recognize notarizations performed by notaries commissioned by other States and U.S. territories. To be recognized pursuant to the Act, a paper document must bear a notary seal, and an electronic document must bear either an electronic notary seal or an electronic signature and required seal information.

### **Section 5: Recognition by State of Notarizations Performed Under Authority of Another State**

Each State and U.S. territory will recognize notarizations performed by notaries commissioned by other States and U.S. territories. To be recognized pursuant to the Act, a paper document must bear a notary seal, and an electronic document must bear either an electronic notary seal or an electronic signature and required seal information.

### **Section 6: Electronic and Remote Notarization Not Required**

The Act does not compel State notaries to perform electronic or remote notarizations or to use technology that the notary has not selected, ensuring that the Act is technology neutral.

### **Section 7: Rights of Aggrieved Persons Not Affected; State Laws on the Practice of Law Not Affected**

The validity of a notarization under the Act does not prevent a challenge to the notarized document or a transaction on other grounds, such as:

- That a person did not sign the document with present intent.
- That an individual was incompetent, lacked authority or capacity, or did not knowingly and voluntarily sign a document.
- Fraud, forgery, mistake, misrepresentation, impersonation, duress, undue influence, or other invalidating cause.

State laws that govern, authorize or prohibit the practice of law are not affected by the Act.

### **Section 8: Exception to Preemption**

Following the same approach established by the federal E-SIGN Act from 2000, State law on electronic and remote notarization is preserved to the extent such State law:

- Constitutes an enactment of RULONA, as approved and recommended by the Uniform Law Commission for State adoption in 2018; or
- Is consistent with the minimum standards in the Act.

The Act therefore preserves the ability of States to adopt technology standards for “tamper seals” and multi-factor authentication, and to update those standards as new technologies become available and reliable, as provided in RULONA.

NOTE: See Sec. 102 of the federal Electronic Signatures in Global and National Commerce (“E-SIGN”) Act (Pub. Law 106-229) on State adoption of uniform electronic signature laws (15 U.S.C. § 7002).

**Section 9: Validity of Notarizations; Standard of Care; Special Notarial Commissions; Savings Clause**

The failure to meet a requirement in the Act does not by itself invalidate or impair a notarization.

The requirements of the Act may be adopted as a State duty or standard of care for which a notary may be sanctioned by State commissioning officials. However, the Act does not create a Federal public or private cause of action or remedy.

The Act preserves the ability of States and State commissioning officials to establish requirements for notary commissions, to sanction notaries, or to create special commissions for electronic or remote notarization.

If a State requires a special commission for electronic or remote notarization, a notary public of that State must hold the required special commission in order to perform electronic or remote notarization.

The Act does not affect the validity of a notarization performed prior to its enactment.

**Section 10: Severability**

The Act includes a standard severability clause.

**Section 11: Definitions**

- “Commissioned”
- “Electronic”
- “Electronic Record”
- “Electronic Signature”
- “Information”
- “Law”
- “Notarization”
- “Person”
- “Record”
- “Requirement”
- “Simultaneously”
- “Stamp or Seal of Office”
- “State”