



August 29, 2022

The Honorable Charles E. Schumer
Majority Leader, U.S. Senate
Washington DC, 20510

The Honorable Mitch McConnell
Minority Leader, U.S. Senate
Washington DC, 20510

The Honorable Dick Durbin
Chair, Senate Judiciary Committee
Washington DC, 20510

The Honorable Chuck Grassley
Ranking Member, Senate Judiciary Committee
Washington DC, 20515

Dear Leader Schumer, Leader McConnell, and Chair Durbin and Ranking Member Grassley,

We write to express our concerns about H.R. 3962 (the SECURE Notarization Act, or The Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021), which would require states to recognize remote online notarizations that meet minimum federal standards, regardless of potentially stronger, current requirements in state law.

With COVID-19 forcing millions of consumers and business to rethink digital security and identity safeguards, it is critical that Congress consider how to best maintain robust protections that are necessary to protect against abuse and fraud. Preemption of state law is not the answer. When the SECURE Notarization Act was first introduced, only 16 states had remote online notarization laws; today, more than 40 states have them.

Unfortunately, this bill fails to require minimum privacy standards while simultaneously requiring the collection and retention of personally identifying and necessarily sensitive information. Currently, standard in-person notaries in many states do not retain copies of notarized documents or even copies of driver's licenses or other ID credentials. In contrast, H.R. 3962 would require an online notary public to collect ID credentials and other data, including facial recognition biometrics and the contents of personal legal documents. Further, this bill would require remote online notarization companies to retain these documents and credentials – as well as the audiovisual recording of the entire performance of the notarization – for at least five years and as much as 10 years. And crucially, the bill does not prohibit the sale or disclosure of the data collected during an online notarization.

Notarial acts relate to some of life's most significant transactions such as end-of-life planning and real estate purchases/sales that have long-lasting consequences for individuals and their families. Although remote online notarization may be a valuable and convenient tool for some consumers, it is critical that states be able to implement safeguards to protect their residents with respect to the authentication process and the security and retention of private, sensitive information. As currently written, this bill would effectively prevent states from enforcing their own consumer protections for remote online notarizations.



If passed as written, the SECURE Notarization ACT would require states to recognize out-of-state notarizations that would not comply with the potentially stronger standards within the state. The Act would thereby incentivize states to establish the weakest standards that could be exported to online transactions in other states, creating a race to the bottom. It also would create significant enforcement problems, as states do not have regulatory oversight of out-of-state notaries.

In addition, private enforcement of disputes could be made more difficult as a result of the SECURE Notarization Act. The use of out-of-state notaries would increase the length, cost, and complexity of litigation over the legitimacy of documents. A litigant in one state would potentially have to conduct discovery against an out-of-state entity, which could expand the cost and length of the process.

Thank you for your consideration of this important legislation. If you have any questions, please contact India McKinney, EFF's Director of Federal Affairs, at india@eff.org.

Signed,

The Electronic Frontier Foundation (EFF)
Center for Democracy and Technology (CDT)
Demand Progress