



State of California  
Office of the Attorney General

**ROB BONTA**  
ATTORNEY GENERAL

August 19, 2024

The Honorable Alex Padilla  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Laphonza Butler  
United States Senate  
112 Hart Senate Office Building  
Washington, D.C. 20510

RE: Concerns with the SECURE Act's (S. 4638) impact on state laws

Dear Senators Padilla and Butler:

I write to express concerns about the SECURE Act (S. 4638, The Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2024, “the Bill”), which would displace certain state notarization laws and bar state efforts to protect our residents in this important area going forward. Notaries are state officials, and states should retain their historical ability to regulate notary practice and recognition to protect our residents – particularly as technology evolves in increasingly dangerous ways, such as through artificial intelligence and deep fakes – rather than having that authority taken away via preemption and forced reciprocity.

As the chief law officer of a state that recently passed its own comprehensive remote online notarization law, I encourage Congress to pursue only legislation that sets a federal floor, not a ceiling, for consumer protections related to remote online notarization. I am especially concerned about our residents’ privacy and the potential for technology-aided fraud and abuse, particularly towards the elderly. Any federal legal framework should allow the states flexibility to respond to developments in real time and regulate notary practice to protect residents of their states from harm. This is best achieved through federal legislation that embraces, rather than preempts, more robust and protective state laws that are in place currently or will be passed in the future.

Laws governing notaries and notarial acts have long been the province of state regulation. Notarial acts – in California and in sister states – are a matter of traditional state concern,

affecting individuals' important life transactions and involving sensitive private information. These transactions often have long-lasting consequences for individuals and their families. Consequently, the primary goal of notarization is not efficiency, but rather to ensure the proper identity of those whose signatures are used to document life-changing transactions – for example, the creation of advance health care directives, the granting of powers of attorney, or real estate sales and purchases. The events that require notarization are rare occurrences in most people's lives, and the consequences of fraud can be profound. Lawsuits challenging the legality of such transactions often are dependent on evidence that a signature was, or was not, validly notarized.

Accordingly, California, like many sister states, has an extensive body of state law governing notaries and notarial acts. These laws govern everything from the registration, eligibility, duties, and bonding requirements of a notary, to the identity-authentication process, to the preservation of private information related to the notarial act. And over time, California has seen fit to adjust requirements, such as the addition of fingerprint requirements for certain real-property documents in response to a wave of falsified loan documents in the 1990s, as well as a requirement that notaries verify a signer's identification documents rather than relying on personal knowledge of the signer's identity. While each state's notary laws may differ, one thing they share is that changes to notary laws have significant implications for the states' civil justice systems. Any changes to these systems must be undertaken with care and designed to evolve over time.

California recently passed a law regulating remote online notarization after a multiyear legislative process. After three times rejecting bills that did not adequately protect consumers, the California Legislature passed SB 696, the Online Notarization Act, with broad bipartisan support. California's law provides many safeguards for Californians for both intrastate notarizations conducted by a California notary, and for interstate notarizations conducted by an out-of-state notary but involving a signer who is in California. And the California Legislature further authorized the Secretary of State to promulgate regulations pursuant to SB 696 including in the areas of credential analysis, electronic journals, identity-proofing, and audio-video communications, as well as with respect to ensuring that individuals with disabilities are accommodated. The California Legislature will undoubtedly continue to monitor developments in this emerging area and may amend the law further in light of rapidly changing technological developments, and to address fraud or other abuses that arise in connection with this new form of notarization. Important protections provided to Californians under SB 696 should not be at risk of being overruled by bare-bones federal requirements.

Rather than respecting the historical ability of states to regulate notaries, notary practice and interstate recognition, the SECURE Act would preempt most of California's protections even for *intrastate* online notarizations involving a California resident and a California notary, as well as protections that California might wish to adopt in the future. The Bill would prohibit states from deviating from federal law except in the narrowest of circumstances. Under our state law, for example, where "personal knowledge" of an individual by law is not satisfactory evidence for a notarial acknowledgment or jurat, California's current identity-authentication

standard would be expressly preempted by a federal standard that – in the judgment of California’s Legislature, based on a history of fraud in the state related to loan documents – provides less protection to consumers. Similarly, any states that have enacted laws for remote online notarization with provisions that accord greater legal effect to the implementation or application of a particular technical specification or technology would be preempted by the SECURE Act. As a result, the Bill’s preemption language operates as a ceiling for protections for the states’ residents, not the floor that it should be. This is particularly dangerous given the rapidly changing technological landscape.

The SECURE Act also interferes with the historical roles and authority of the states through forced *interstate* recognition. While certain provisions of the Bill give the illusion that each state has the ability to set its own standards above the floor provided (e.g., Section (j)), the reality is that online notary companies can set up shop in a lightly regulated jurisdiction that does not meet the state’s notary standards. Because the SECURE Act requires each state to recognize remotely notarized documents from another jurisdiction as long as the laws of the state meet the minimum federal requirements – even if the signer is in-state – the SECURE Act invites a race to the bottom. While California currently recognizes out-of-state notarizations, our legislature should be able to revisit that decision, for example if other states’ loosely regulated online notarizations result in invasions of privacy or fraud against our residents.

The potential negative effects of forced reciprocity are compounded by, and perhaps best illustrated through, the SECURE Act’s failure to address the protection of consumers’ personal information. With traditional, in-person notarization, the privacy concerns are fairly minimal, as notary journal entries typically are limited to identifying a date and document and possibly including a passport or driver’s license number. And notaries do not keep copies of the documents notarized, such as a will, and none of this information is online. In contrast, in a typical online notarization, a notary receives a substantial amount of sensitive information, which may include preserving electronic copies of an individual’s financial, familial, and medical affairs. While a lost notary journal may put at risk the information of a few hundred transactions, a single data breach could imperil information regarding hundreds of thousands if not millions of transactions. California’s new remote online notarization law protects consumers by requiring the platforms that host interstate notarizations to encrypt audiovisual recordings and all other records, to take reasonable precautions to prevent unauthorized access, and to notify law enforcement in the event of a breach. California law also generally prohibits platforms from accessing, using, disclosing or selling consumers’ information. The SECURE Act, in contrast, has no requirements other than that the notary must comply with the laws of the notary’s state on retention, security, use or disclosure of information, which is likely to be the lowest common denominator.

California – no doubt similar to some of its sister states – has been diligent in its approach to remote online notarization and consideration of its long-term effects, particularly with respect to fraud and privacy issues. California’s judgment about how best to protect its residents should not be overruled by interests not accountable to California voters. Any federal legal framework for remote online notarization should allow flexibility for states to monitor

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developments related to technology and fraud and leave the door open for more rigorous and protective state laws.

Sincerely,

A handwritten signature in blue ink that reads "Rob Bonta". The signature is written in a cursive, flowing style.

ROB BONTA  
Attorney General