

February 1, 2024

Senator Dick Durbin  
Chairman  
U.S. Senate Committee on the Judiciary  
Washington, DC

Dear Senator Durbin

Re: Concerns with [HR 1059 – Secure Notarization Act of 2023](#)

The undersigned consumer representatives write to encourage you to address problems with HR 1058 before the bill is considered in your committee. The current version will harm consumers and aid scammers by making it considerably more difficult to challenge frauds involving electronic records and electronic signatures.

Across the nation scammers are increasingly using electronic signatures and electronic records to facilitate frauds against consumers (often seniors, low-income, people of color, or persons with a disability). Passage of HR 1059 will make these transactions even harder to challenge by adopting a presumption that a remote notarization is valid despite highly inadequate protections to prevent fraud and by preempting more protective, consumer-friendly state laws for remote notarization.

While many dealings conducted through electronic means are entirely legitimate, increasingly electronic media has been *used to hide the true terms* of the contracts from consumers. These fraudulent transactions are expedited using electronic media: required disclosures and the contracts are sent to an email address that does not belong to the consumer or the consumer does not use; the consumer signs the contract on the seller's tablet while being told they are signing something other than the contract, never being provided with the real terms in a way they will see. In these situations, the true costs are much more than the consumer was led to believe.<sup>1</sup>

This misconduct involves a range of products, including solar panel sales,<sup>2</sup> change in energy suppliers, predatory loans for car repairs,<sup>3</sup> pets and furniture,<sup>4</sup> car sales, and others, which are sold to consumers who are in the same physical space as the sellers. However, rather than using paper to provide the required disclosures and pen and ink to sign the contract, electronic records and signatures are used.

When a document is notarized it carries a presumption of validity, which requires a high standard of proof (clear and convincing evidence) to overcome. HR 1059 as currently written, would effectively lock in the frauds, exacerbating the challenges to unwinding the deceptive contracts, for these reasons:

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<sup>1</sup> E-Signing Your Rights Away, available at <https://www.consumerslaw.com/blog/e-signing-your-rights-away/>

<sup>2</sup> Rooftop Solar Power Has a Dark Side, available at <https://time.com/6317339/rooftop-solar-power-failure/>; Help! A Solar Company Forged My Signature on a Contract, available at <https://www.consumerslaw.com/blog/help-a-solar-company-forged-my-signature-on-a-contract/>; How Solar Sales Bros Threaten the Green Energy Transition, available at <https://time.com/6337766/solar-sales-bros-door-to-door/>; False promises: As states tackle residential solar complaints, how companies can avoid problems, available at <https://www.utilitydive.com/news/residential-rooftop-solar-complaints-tax-credits-fraud-deceptive-abusive-practices/651774/>

<sup>3</sup> Predatory Auto Repair Loans by TAB Bank and EasyPay Finance, available at [https://www.nclc.org/wp-content/uploads/2022/09/Rpt-TAB\\_Auto\\_Repair-5.11.22.pdf](https://www.nclc.org/wp-content/uploads/2022/09/Rpt-TAB_Auto_Repair-5.11.22.pdf)

<sup>4</sup> Predatory Puppy Loans by TAB Bank and EasyPay Finance, available at [https://www.nclc.org/wp-content/uploads/2022/09/IB\\_Easypay\\_Puppy\\_Loans\\_Feb22.pdf](https://www.nclc.org/wp-content/uploads/2022/09/IB_Easypay_Puppy_Loans_Feb22.pdf).

1. **Fraudsters could serve as notaries.** There is no prohibition in HR 1059 against a remote notary notarizing a transaction in which the notary benefits. This is in contrast with the uniform law on electronic notarization issued by the Uniform Law Commission (known as [RULANA](#))<sup>5</sup>, which prohibits a notary from notarizing a transaction if the notary (or their spouse) would benefit from the transaction (§4(b)).
2. **Fraudsters could be “credible witnesses.”** HR 1059 in § 4(b)(2)(II) permits a "credible witness" to certify the identity of the remote individual whose signature is being notarized through a credible witness.<sup>6</sup> And the credible witness can be anyone whose identity can be ascertained by the notary through a driver's license, etc. Allowing a “credible witness” who is not in the same physical space of the signer to authenticate the signer’s identity would allow a fraudster to attest to the identity of the signer, possibly even without the signer even being aware that they are signing a notarized document. The bill must prohibit anyone acting as a credible witness if they would derive any benefit from the transaction.
3. **No meaningful assurances that the notarized document cannot be changed.** HR 1059, in § 3(b)(2), requires that the electronic signature must be “bound to the electronic record in a manner that renders any subsequent change or modification to the electronic record evident.” However, § 4(b)(2)(C) undermines that safeguard by allowing the notary to take only “reasonable steps” to confirm that the record being notarized is the one the individual intended to sign.<sup>7</sup> Given the significance of attaching a notarial seal to a document, the notary should be required to certify that they believe that the record notarized is the one the individual intended to sign. In many current cases, consumers often intend to electronically sign contracts with very different terms from those creditors claim they signed. RULANA includes similar problematic language in §14A(c)(2).
4. **No meaningful consumer redress.** The language in HR 1059’s § 8(b)—which purports to ensure that an “aggrieved person” can employ other remedies—does not meaningfully protect against the harms that could be caused by fraudulent notarizations. Notarizations generally have a presumption of genuineness that is difficult to overcome, and that presumption is carried through in this bill, §§ 5(c), and 6(c). The opacity of the electronic medium makes it very difficult even for governmental enforcement agents to prosecute fraudsters.<sup>8</sup> The current difficulties would be exacerbated with the added challenge of remote notarizations that include a presumption of authenticity to the problematic transactions.
5. **Loopholes that swallow the protections.** Most problematically, § 8(a) states that the failure to comply with any of the requirements of sections 3 or 4 “shall not invalidate or impair the validity or recognition of the notarization.” The consequence of that provision essentially detaches all remote notarizations from any of the requirements in the rest of the bill. This provision appears to mean that regardless of any flaw in the remote notarization process, the notarization is still considered valid, even when it has been conducted without complying with any of the protections in the bill. Section 8(a) eviscerates the protections in the rest of the bill.

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<sup>5</sup> Law on Notarial Acts, Revised Uniform, available at <https://www.uniformlaws.org/viewdocument/final-act-16?CommunityKey=e5350d2e-df77-4dfd-8cf0-eeef41cc09f1&tab=librarydocuments>

<sup>6</sup> RULANA also includes this same flaw in § 7 (b)(2).

<sup>7</sup> Some state laws—which would be preempted by HR 1059—expressly require the notary to ensure that the signer understands what document being signed.

<sup>8</sup> The offices of many state Attorneys General can attest to both the growing number of complaints about fraud in electronic transactions, and the difficulties in resolving them.

6. **Preemption of more protective state laws.** Section 9 of HR 1059 contains a “reverse preemption” provision that mimics the displacement provision in E-Sign, 15 U.S.C. § 7002. But experience has proven that provision is seriously flawed. No one understands it, and there is no agreement about how it works. Courts that have tried to interpret it have been completely confused and have issued inconsistent—and in some cases—grossly incorrect rulings. Importantly, our initial review indicates that HR 1059 would preempt the law of many states with better protections, including the laws of California, Georgia, Illinois, New York, North Carolina, South Carolina, and Tennessee. Additionally, any changes to the uniform law already made by individual states that adopted it may also be preempted—that issue is unclear. The bill should allow states to avoid preemption if the state law provides the same or greater protections to the public.

We believe that there are changes to this bill that would permit it to accomplish its goals without facilitating fraudulent acts against consumers. For questions, please contact Margot Saunders, Senior Counsel, National Consumer Law Center at [Msaunders@nclc.org](mailto:Msaunders@nclc.org).

Thank you for considering our concerns.

Sincerely,

Americans for Financial Reform  
Center for Economic Justice  
Consumer Action  
Consumer Federation of America  
National Association of Consumer Advocates  
National Consumer Law Center (on behalf of its low-income clients)  
National Consumers League  
Public Citizen  
Public Good Law Center  
The One Less Foundation  
Arizona Center for Economic Integrity  
California Consumer Federation of California  
Delaware Community Reinvestment Action Council  
Tzedek DC  
Florida Jacksonville Area Legal Aid, Inc.  
Georgia Watch  
Kentucky Equal Justice Center  
Maryland Public Justice Center  
Pennsylvania National Housing Resource Center  
South Carolina Appleseed Legal Justice Center  
Texas Appleseed  
Virginia Citizens Consumer Council  
Virginia Poverty Law Center  
Prof. Cathy Lesser, Professor at Case Western Reserve University School of Law  
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