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September 26, 2022

The Honorable Charles E. Schumer
Majority Leader
U.S. Senate
Washington, DC, 20515

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
Washington, DC 20515

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
Washington, DC 20515

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

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

Consumers' Research¹ is a 501(c)(3) educational non-profit organization that advocates for the general interests of consumers. This letter intends to present a consumer-focused discussion of the issues relating to H.R. 3962², The SECURE Notarization Act of 2021. Consumers' Research believes that at the beginning of the COVID-19 pandemic, the general purpose of the bill would have been in the best interest of consumers. Interstate recognition of Remote Online Notarization (RON) allows consumers nationwide to have easier access to notaries public. However, as the SECURE Act slowly moved through Congress over the course of several years, almost every state in the nation amended its state law to allow consumers to use RON on documents.

Consumers' Research has a significant and longstanding interest in protecting consumers' financial access and securing financial independence. The underlying goal of H.R. 3962, expanding consumer access to notaries is well intended. However, because of the two-year delay in passage, the bill has been overrun by events. In fact, if signed into law, H.R. 3962 could actually lead to a nationwide decrease in consumer privacy protections and security standards used in RON.

During the pandemic, many Americans had to deal with inefficient and inconvenient laws for notarial acts and document witnessing (for probate documents, as an example) around the country. Many states still required certain documents in the presence of a notary, even during the pandemic. Some went so far as to require a go-between to shuttle paperwork to sign from office to car while the notary watched from afar. However, by the end of the pandemic, more than 40 states had passed a law allowing RON. The few states that do not have laws on the books allowing RON will likely pass laws approving its use soon.

¹ Founded in 1929, Consumers' Research is the nation's oldest consumer affairs organization. Consumers' Research aims to increase the knowledge and understanding of issues, policies, products, and services of concern to consumers and to promote the freedom to act on that knowledge and understanding.

² Senate companion bill S. 1625.

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As such, there is no longer a need to force RON upon states that have not adopted RON. Instead, there is more of a need to ensure consumer privacy data is properly protected. Here, H.R. 3962 fails. The states that have adopted RON have already set their own consumer privacy and security standards. While some state requirements are more stringent than others, almost all states have substantially higher privacy and security standards than those that Sections 3, 4, and 9 of H.R. 3962 would set. Furthermore, Consumers' Research believes that, if passed as written, H.R. 3962 would eventually lead states to adopt the bare minimum of security standards set by the bill. Consumers cannot afford a race to the bottom.

Consumers' Research believes that passage H.R. 3962 is a federal solution to a problem the states have already solved. It would not be in the best interest of consumers for the bill to be signed into law.

Consumers' Research encourages the Senate Judiciary Committee to hold a robust hearing on H.R. 3962 with representatives from states that have already passed laws allowing RON to explain why states should be prevented from setting technology requirements by the Section 9 federal technology preemption provision. Should you have any questions, please contact Beau Brunson, Director of Policy and Regulatory Affairs at Consumers' Research, at bbrunson@consumersresearch.org.

Sincerely,

Will Hild

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Executive Director, Consumers' Research

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