

AMENDMENT TO RULES COMMITTEE PRINT 118-

10

OFFERED BY MR. ARMSTRONG OF NORTH

DAKOTA

At the end of title XVIII, add the following:

1 **Subtitle D—Securing and Enabling**
2 **Commerce Using Remote and**
3 **Electronic Notarization**

4 **SEC. 1861. DEFINITIONS.**

5 In this subtitle:

6 (1) **COMMUNICATION TECHNOLOGY.**—The term
7 “communication technology”, with respect to a nota-
8 rization, means an electronic device or process that
9 allows the notary public performing the notarization,
10 a remotely located individual, and (if applicable) a
11 credible witness to communicate with each other si-
12 multaneously by sight and sound during the notari-
13 zation.

14 (2) **ELECTRONIC; ELECTRONIC RECORD; ELEC-**
15 **TRONIC SIGNATURE; INFORMATION; PERSON;**
16 **RECORD.**—The terms “electronic”, “electronic
17 record”, “electronic signature”, “information”, “per-
18 son”, and “record” have the meanings given those

1 terms in section 106 of the Electronic Signatures in
2 Global and National Commerce Act (15 U.S.C.
3 7006).

4 (3) LAW.—The term “law” includes any stat-
5 ute, regulation, rule, or rule of law.

6 (4) NOTARIAL OFFICER.—The term “notarial
7 officer” means—

8 (A) a notary public; or

9 (B) any other individual authorized to per-
10 form a notarization under the laws of a State
11 without a commission or appointment as a no-
12 tary public.

13 (5) NOTARIAL OFFICER’S STATE; NOTARY PUB-
14 LIC’S STATE.—The term “notarial officer’s State” or
15 “notary public’s State” means the State in which a
16 notarial officer, or a notary public, as applicable, is
17 authorized to perform a notarization.

18 (6) NOTARIZATION.—The term “notariza-
19 tion”—

20 (A) means any act that a notarial officer
21 may perform under—

22 (i) Federal law, including this subtitle;

23 or

24 (ii) the laws of the notarial officer’s
25 State; and

1 (B) includes any act described in subpara-
2 graph (A) and performed by a notarial officer—

3 (i) with respect to—

4 (I) a tangible record; or

5 (II) an electronic record; and

6 (ii) for—

7 (I) an individual in the physical
8 presence of the notarial officer; or

9 (II) a remotely located individual.

10 (7) NOTARY PUBLIC.—The term “notary pub-
11 lic” means an individual commissioned or appointed
12 as a notary public to perform a notarization under
13 the laws of a State.

14 (8) PERSONAL KNOWLEDGE.—The term “per-
15 sonal knowledge”, with respect to the identity of an
16 individual, means knowledge of the identity of the
17 individual through dealings sufficient to provide rea-
18 sonable certainty that the individual has the identity
19 claimed.

20 (9) REMOTELY LOCATED INDIVIDUAL.—The
21 term “remotely located individual”, with respect to
22 a notarization, means an individual who is not in the
23 physical presence of the notarial officer performing
24 the notarization.

1 (10) REQUIREMENT.—The term “requirement”
2 includes a duty, a standard of care, and a prohibi-
3 tion.

4 (11) SIGNATURE.—The term “signature”
5 means—

6 (A) an electronic signature; or

7 (B) a tangible symbol executed or adopted
8 by a person and evidencing the present intent
9 to authenticate or adopt a record.

10 (12) SIMULTANEOUSLY.—The term “simulta-
11 neously”, with respect to a communication between
12 parties—

13 (A) means that each party communicates
14 substantially simultaneously and without unrea-
15 sonable interruption or disconnection; and

16 (B) includes any reasonably short delay
17 that is inherent in, or common with respect to,
18 the method used for the communication.

19 (13) STATE.—The term “State”—

20 (A) means—

21 (i) any State of the United States;

22 (ii) the District of Columbia;

23 (iii) the Commonwealth of Puerto
24 Rico;

1 (iv) any territory or possession of the
2 United States; and

3 (v) any federally recognized Indian
4 Tribe; and

5 (B) includes any executive, legislative, or
6 judicial agency, court, department, board, of-
7 fice, clerk, recorder, register, registrar, commis-
8 sion, authority, institution, instrumentality,
9 county, municipality, or other political subdivi-
10 sion of an entity described in any of clauses (i)
11 through (v) of subparagraph (A).

12 **SEC. 1862. AUTHORIZATION TO PERFORM AND MINIMUM**
13 **STANDARDS FOR ELECTRONIC NOTARIZA-**
14 **TION.**

15 (a) **AUTHORIZATION.**—Unless prohibited under sec-
16 tion 1869, and subject to subsection (b), a notary public
17 may perform a notarization that occurs in or affects inter-
18 state commerce with respect to an electronic record.

19 (b) **REQUIREMENTS OF ELECTRONIC NOTARIZA-**
20 **TION.**—If a notary public performs a notarization under
21 subsection (a), the following requirements shall apply with
22 respect to the notarization:

23 (1) The electronic signature of the notary pub-
24 lic, and all other information required to be included

1 under other applicable law, shall be attached to or
2 logically associated with the electronic record.

3 (2) The electronic signature and other informa-
4 tion described in paragraph (1) shall be bound to
5 the electronic record in a manner that renders any
6 subsequent change or modification to the electronic
7 record evident.

8 **SEC. 1863. AUTHORIZATION TO PERFORM AND MINIMUM**
9 **STANDARDS FOR REMOTE NOTARIZATION.**

10 (a) AUTHORIZATION.—Unless prohibited under sec-
11 tion 1869, and subject to subsection (b), a notary public
12 may perform a notarization that occurs in or affects inter-
13 state commerce for a remotely located individual.

14 (b) REQUIREMENTS OF REMOTE NOTARIZATION.—If
15 a notary public performs a notarization under subsection
16 (a), the following requirements shall apply with respect to
17 the notarization:

18 (1) The remotely located individual shall appear
19 personally before the notary public at the time of the
20 notarization by using communication technology.

21 (2) The notary public shall—

22 (A) reasonably identify the remotely lo-
23 cated individual—

1 (i) through personal knowledge of the
2 identity of the remotely located individual;

3 or

4 (ii) by obtaining satisfactory evidence
5 of the identity of the remotely located indi-
6 vidual by—

7 (I) using not fewer than 2 dis-
8 tinct types of processes or services
9 through which a third person provides
10 a means to verify the identity of the
11 remotely located individual through a
12 review of public or private data
13 sources; or

14 (II) oath or affirmation of a
15 credible witness who—

16 (aa)(AA) is in the physical
17 presence of the notary public or
18 the remotely located individual;
19 or

20 (BB) appears personally be-
21 fore the notary public and the re-
22 motely located individual by
23 using communication technology;

1 (bb) has personal knowledge
2 of the identity of the remotely lo-
3 cated individual; and

4 (cc) has been identified by
5 the notary public in the same
6 manner as specified for identi-
7 fication of a remotely located in-
8 dividual under clause (i) or sub-
9 clause (I) of this clause;

10 (B) either directly or through an agent—

11 (i) create an audio and visual record-
12 ing of the performance of the notarization;
13 and

14 (ii) notwithstanding any resignation
15 from, or revocation, suspension, or termi-
16 nation of, the notary public's commission
17 or appointment, retain the recording cre-
18 ated under clause (i) as a notarial
19 record—

20 (I) for a period of not less
21 than—

22 (aa) if an applicable law of
23 the notary public's State specifies
24 a period of retention, the greater
25 of—

1 (AA) that specified pe-
2 riod; or

3 (BB) 5 years after the
4 date on which the recording
5 is created; or

6 (bb) if no applicable law of
7 the notary public's State specifies
8 a period of retention, 10 years
9 after the date on which the re-
10 cording is created; and

11 (II) if any applicable law of the
12 notary public's State governs the con-
13 tent, manner or place of retention, se-
14 curity, use, effect, or disclosure of the
15 recording or any information con-
16 tained in the recording, in accordance
17 with that law; and

18 (C) if the notarization is performed with
19 respect to a tangible or electronic record, take
20 reasonable steps to confirm that the record be-
21 fore the notary public is the same record with
22 respect to which the remotely located individual
23 made a statement or on which the individual ex-
24 ecuted a signature.

1 (3) If a guardian, conservator, executor, per-
2 sonal representative, administrator, or similar fidu-
3 ciary or successor is appointed for or on behalf of
4 a notary public or a deceased notary public under
5 applicable law, that person shall retain the recording
6 under paragraph (2)(B)(ii), unless—

7 (A) another person is obligated to retain
8 the recording under applicable law of the notary
9 public's State; or

10 (B)(i) under applicable law of the notary
11 public's State, that person may transmit the re-
12 cording to an office, archive, or repository ap-
13 proved or designated by the State; and

14 (ii) that person transmits the recording to
15 the office, archive, or repository described in
16 clause (i) in accordance with applicable law of
17 the notary public's State.

18 (4) If the remotely located individual is phys-
19 ically located outside the geographic boundaries of a
20 State, or is otherwise physically located in a location
21 that is not subject to the jurisdiction of the United
22 States, at the time of the notarization—

23 (A) the record shall—

24 (i) be intended for filing with, or re-
25 late to a matter before, a court, govern-

1 mental entity, public official, or other enti-
2 ty that is subject to the jurisdiction of the
3 United States; or

4 (ii) involve property located in the ter-
5 ritorial jurisdiction of the United States or
6 a transaction substantially connected to
7 the United States; and

8 (B) the act of making the statement or
9 signing the record may not be prohibited by a
10 law of the jurisdiction in which the individual is
11 physically located.

12 (c) **PERSONAL APPEARANCE SATISFIED.**—If a State
13 or Federal law requires an individual to appear personally
14 before or be in the physical presence of a notary public
15 at the time of a notarization, that requirement shall be
16 considered to be satisfied if—

17 (1) the individual—

18 (A) is a remotely located individual; and

19 (B) appears personally before the notary
20 public at the time of the notarization by using
21 communication technology; and

22 (2)(A) the notarization was performed under or
23 relates to a public act, record, or judicial proceeding
24 of the notary public's State; or

1 (B) the notarization occurs in or affects inter-
2 state commerce.

3 **SEC. 1864. RECOGNITION OF NOTARIZATIONS IN FEDERAL**
4 **COURT.**

5 (a) RECOGNITION OF VALIDITY.—Each court of the
6 United States shall recognize as valid under the State or
7 Federal law applicable in a judicial proceeding before the
8 court any notarization performed by a notarial officer of
9 any State if the notarization is valid under the laws of
10 the notarial officer’s State or under this subtitle.

11 (b) LEGAL EFFECT OF RECOGNIZED NOTARIZA-
12 TION.—A notarization recognized under subsection (a)
13 shall have the same effect under the State or Federal law
14 applicable in the applicable judicial proceeding as if that
15 notarization was validly performed—

16 (1)(A) by a notarial officer of the State, the law
17 of which is applicable in the proceeding; or

18 (B) under this subtitle or other Federal law;
19 and

20 (2) without regard to whether the notarization
21 was performed—

22 (A) with respect to—

23 (i) a tangible record; or

24 (ii) an electronic record; or

25 (B) for—

1 (i) an individual in the physical pres-
2 ence of the notarial officer; or

3 (ii) a remotely located individual.

4 (c) PRESUMPTION OF GENUINENESS.—In a deter-
5 mination of the validity of a notarization for the purposes
6 of subsection (a), the signature and title of an individual
7 performing the notarization shall be prima facie evidence
8 in any court of the United States that the signature of
9 the individual is genuine and that the individual holds the
10 designated title.

11 (d) CONCLUSIVE EVIDENCE OF AUTHORITY.—In a
12 determination of the validity of a notarization for the pur-
13 poses of subsection (a), the signature and title of the fol-
14 lowing notarial officers of a State shall conclusively estab-
15 lish the authority of the officer to perform the notariza-
16 tion:

17 (1) A notary public of that State.

18 (2) A judge, clerk, or deputy clerk of a court
19 of that State.

20 **SEC. 1865. RECOGNITION BY STATE OF NOTARIZATIONS**
21 **PERFORMED UNDER AUTHORITY OF AN-**
22 **OTHER STATE.**

23 (a) RECOGNITION OF VALIDITY.—Each State shall
24 recognize as valid under the laws of that State any notari-

1 zation performed by a notarial officer of any other State
2 if—

3 (1) the notarization is valid under the laws of
4 the notarial officer's State or under this subtitle;
5 and

6 (2)(A) the notarization was performed under or
7 relates to a public act, record, or judicial proceeding
8 of the notarial officer's State; or

9 (B) the notarization occurs in or affects inter-
10 state commerce.

11 (b) LEGAL EFFECT OF RECOGNIZED NOTARIZA-
12 TION.—A notarization recognized under subsection (a)
13 shall have the same effect under the laws of the recog-
14 nizing State as if that notarization was validly performed
15 by a notarial officer of the recognizing State, without re-
16 gard to whether the notarization was performed—

17 (1) with respect to—

18 (A) a tangible record; or

19 (B) an electronic record; or

20 (2) for—

21 (A) an individual in the physical presence
22 of the notarial officer; or

23 (B) a remotely located individual.

24 (c) PRESUMPTION OF GENUINENESS.—In a deter-
25 mination of the validity of a notarization for the purposes

1 of subsection (a), the signature and title of an individual
2 performing a notarization shall be prima facie evidence in
3 any State court or judicial proceeding that the signature
4 is genuine and that the individual holds the designated
5 title.

6 (d) CONCLUSIVE EVIDENCE OF AUTHORITY.—In a
7 determination of the validity of a notarization for the pur-
8 poses of subsection (a), the signature and title of the fol-
9 lowing notarial officers of a State shall conclusively estab-
10 lish the authority of the officer to perform the notariza-
11 tion:

12 (1) A notary public of that State.

13 (2) A judge, clerk, or deputy clerk of a court
14 of that State.

15 **SEC. 1866. ELECTRONIC AND REMOTE NOTARIZATION NOT**
16 **REQUIRED.**

17 Nothing in this subtitle may be construed to require
18 a notary public to perform a notarization—

19 (1) with respect to an electronic record;

20 (2) for a remotely located individual; or

21 (3) using a technology that the notary public
22 has not selected.

1 **SEC. 1867. VALIDITY OF NOTARIZATIONS; RIGHTS OF AG-**
2 **GRIEVED PERSONS NOT AFFECTED; STATE**
3 **LAWS ON THE PRACTICE OF LAW NOT AF-**
4 **FECTED.**

5 (a) **VALIDITY NOT AFFECTED.**—The failure of a no-
6 tary public to meet a requirement under section 1862 or
7 1863 in the performance of a notarization, or the failure
8 of a notarization to conform to a requirement under sec-
9 tion 1862 or 1863, shall not invalidate or impair the valid-
10 ity or recognition of the notarization.

11 (b) **RIGHTS OF AGGRIEVED PERSONS.**—The validity
12 and recognition of a notarization under this subtitle may
13 not be construed to prevent an aggrieved person from
14 seeking to invalidate a record or transaction that is the
15 subject of a notarization or from seeking other remedies
16 based on State or Federal law other than this subtitle for
17 any reason not specified in this subtitle, including on the
18 basis—

19 (1) that a person did not, with present intent
20 to authenticate or adopt a record, execute a signa-
21 ture on the record;

22 (2) that an individual was incompetent, lacked
23 authority or capacity to authenticate or adopt a
24 record, or did not knowingly and voluntarily authen-
25 ticate or adopt a record; or

1 (3) of fraud, forgery, mistake, misrepresenta-
2 tion, impersonation, duress, undue influence, or
3 other invalidating cause.

4 (c) **RULE OF CONSTRUCTION.**—Nothing in this sub-
5 title may be construed to affect a State law governing,
6 authorizing, or prohibiting the practice of law.

7 **SEC. 1868. EXCEPTION TO PREEMPTION.**

8 (a) **IN GENERAL.**—A State law may modify, limit, or
9 supersede the provisions of section 1862, or subsection (a)
10 or (b) of section 1863, with respect to State law only if
11 that State law—

12 (1) either—

13 (A) constitutes an enactment or adoption
14 of the Revised Uniform Law on Notarial Acts,
15 as approved and recommended for enactment in
16 all the States by the National Conference of
17 Commissioners on Uniform State Laws in 2018
18 or the Revised Uniform Law on Notarial Acts,
19 as approved and recommended for enactment in
20 all the States by the National Conference of
21 Commissioners on Uniform State Laws in
22 2021, except that a modification to such Law
23 enacted or adopted by a State shall be pre-
24 empted to the extent such modification—

1 (i) is inconsistent with a provision of
2 section 1862 or subsection (a) or (b) of
3 section 1863, as applicable; or

4 (ii) would not be permitted under sub-
5 paragraph (B); or

6 (B) specifies additional or alternative pro-
7 cedures or requirements for the performance of
8 notarizations with respect to electronic records
9 or for remotely located individuals, if those ad-
10 ditional or alternative procedures or require-
11 ments—

12 (i) are consistent with section 1862
13 and subsections (a) and (b) of section
14 1863; and

15 (ii) do not accord greater legal effect
16 to the implementation or application of a
17 specific technology or technical specifica-
18 tion for performing those notarizations;
19 and

20 (2) requires the retention of an audio and vis-
21 ual recording of the performance of a notarization
22 for a remotely located individual for a period of not
23 less than 5 years after the recording is created.

24 (b) RULE OF CONSTRUCTION.—Nothing in section
25 1864 or 1865 may be construed to preclude the recogni-

1 tion of a notarization under applicable State law, regard-
2 less of whether such State law is consistent with section
3 1864 or 1865.

4 **SEC. 1869. STANDARD OF CARE; SPECIAL NOTARIAL COM-**
5 **MISSIONS.**

6 (a) STATE STANDARDS OF CARE; AUTHORITY OF
7 STATE REGULATORY OFFICIALS.—Nothing in this sub-
8 title may be construed to prevent a State, or a notarial
9 regulatory official of a State, from—

10 (1) adopting a requirement in this subtitle as a
11 duty or standard of care under the laws of that
12 State or sanctioning a notary public for breach of
13 such a duty or standard of care;

14 (2) establishing requirements and qualifications
15 for, or denying, refusing to renew, revoking, sus-
16 pending, or imposing a condition on, a commission
17 or appointment as a notary public;

18 (3) creating or designating a class or type of
19 commission or appointment, or requiring an endorse-
20 ment or other authorization to be received by a no-
21 tary public, as a condition on the authority to per-
22 form notarizations with respect to electronic records
23 or for remotely located individuals; or

24 (4) prohibiting a notary public from performing
25 a notarization under section 1862 or 1863 as a

1 sanction for a breach of duty or standard of care or
2 for official misconduct.

3 (b) SPECIAL COMMISSIONS OR AUTHORIZATIONS
4 CREATED BY A STATE; SANCTION FOR BREACH OR OFFI-
5 CIAL MISCONDUCT.—A notary public may not perform a
6 notarization under section 1862 or 1863 if—

7 (1)(A) the notary public’s State has enacted a
8 law that creates or designates a class or type of
9 commission or appointment, or requires an endorse-
10 ment or other authorization to be received by a no-
11 tary public, as a condition on the authority to per-
12 form notarizations with respect to electronic records
13 or for remotely located individuals; and

14 (B) the commission or appointment of the no-
15 tary public is not of the class or type or the notary
16 public has not received the endorsement or other au-
17 thorization; or

18 (2) the notarial regulatory official of the notary
19 public’s State has prohibited the notary public from
20 performing the notarization as a sanction for a
21 breach of duty or standard of care or for official
22 misconduct.

23 **SEC. 1870. SEVERABILITY.**

24 If any provision of this subtitle or the application of
25 such provision to any person or circumstance is held to

1 be invalid or unconstitutional, the remainder of this sub-
2 title and the application of the provisions thereof to other
3 persons or circumstances shall not be affected by that
4 holding.

