AMENDMENT TO RULES COMMITTEE PRINT 118–10

OFFERED BY MR. ARMSTRONG OF NORTH DAKOTA

At the end of title XVIII, add the following:

Subtitle D—Securing and Enabling Commerce Using Remote and Electronic Notarization

SEC. 1861. DEFINITIONS.

In this subtitle:

(1) Communication technology.—The term “communication technology”, with respect to a notarization, means an electronic device or process that allows the notary public performing the notarization, a remotely located individual, and (if applicable) a credible witness to communicate with each other simultaneously by sight and sound during the notarization.

(2) Electronic; electronic record; electronic signature; information; person; record.—The terms “electronic”, “electronic record”, “electronic signature”, “information”, “person”, and “record” have the meanings given those
terms in section 106 of the Electronic Signatures in
Global and National Commerce Act (15 U.S.C.
7006).

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

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

(A) a notary public; or

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

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

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

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

(i) Federal law, including this subtitle;

or

(ii) the laws of the notarial officer’s
State; and
(B) includes any act described in subparagraph (A) and performed by a notarial officer—

(i) with respect to—

(I) a tangible record; or

(II) an electronic record; and

(ii) for—

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

(II) a remotely located individual.

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

(8) PERSONAL KNOWLEDGE.—The term “personal knowledge”, with respect to the identity of an individual, means knowledge of the identity of the individual through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(9) REMOTELY LOCATED INDIVIDUAL.—The term “remotely located individual”, with respect to a notarization, means an individual who is not in the physical presence of the notarial officer performing the notarization.
(10) REQUIREMENT.—The term “requirement” includes a duty, a standard of care, and a prohibition.

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

(A) an electronic signature; or

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

(12) SIMULTANEOUSLY.—The term “simultaneously”, with respect to a communication between parties—

(A) means that each party communicates substantially simultaneously and without unreasonable interruption or disconnection; and

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

(13) STATE.—The term “State”—

(A) means—

(i) any State of the United States;

(ii) the District of Columbia;

(iii) the Commonwealth of Puerto Rico;
(iv) any territory or possession of the United States; and
(v) any federally recognized Indian Tribe; and
(B) includes any executive, legislative, or judicial agency, court, department, board, office, clerk, recorder, register, registrar, commission, authority, institution, instrumentality, county, municipality, or other political subdivision of an entity described in any of clauses (i) through (v) of subparagraph (A).

SEC. 1862. AUTHORIZATION TO PERFORM AND MINIMUM STANDARDS FOR ELECTRONIC NOTARIZATION.

(a) AUTHORIZATION.—Unless prohibited under section 1869, and subject to subsection (b), a notary public may perform a notarization that occurs in or affects interstate commerce with respect to an electronic record.

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

(1) The electronic signature of the notary public, and all other information required to be included
under other applicable law, shall be attached to or logically associated with the electronic record.

(2) The electronic signature and other information described in paragraph (1) shall be bound to the electronic record in a manner that renders any subsequent change or modification to the electronic record evident.

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

(a) AUTHORIZATION.—Unless prohibited under section 1869, and subject to subsection (b), a notary public may perform a notarization that occurs in or affects interstate commerce for a remotely located individual.

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

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

(2) The notary public shall—

(A) reasonably identify the remotely located individual—
(i) through personal knowledge of the identity of the remotely located individual;

or

(ii) by obtaining satisfactory evidence of the identity of the remotely located individual by—

(I) using not fewer than 2 distinct types of processes or services through which a third person provides a means to verify the identity of the remotely located individual through a review of public or private data sources; or

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

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

(BB) appears personally before the notary public and the remotely located individual by using communication technology;
(bb) has personal knowledge of the identity of the remotely located individual; and

(cc) has been identified by the notary public in the same manner as specified for identification of a remotely located individual under clause (i) or sub-clause (I) of this clause;

(B) either directly or through an agent—

(i) create an audio and visual recording of the performance of the notarization; and

(ii) notwithstanding any resignation from, or revocation, suspension, or termination of, the notary public’s commission or appointment, retain the recording created under clause (i) as a notarial record—

(I) for a period of not less than—

(aa) if an applicable law of the notary public’s State specifies a period of retention, the greater of—
(AA) that specified period; or

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

(bb) if no applicable law of the notary public’s State specifies a period of retention, 10 years after the date on which the recording is created; and

(II) if any applicable law of the notary public’s State governs the content, manner or place of retention, security, use, effect, or disclosure of the recording or any information contained in the recording, in accordance with that law; and

(C) if the notarization is performed with respect to a tangible or electronic record, take reasonable steps to confirm that the record before the notary public is the same record with respect to which the remotely located individual made a statement or on which the individual executed a signature.
(3) If a guardian, conservator, executor, personal representative, administrator, or similar fiduciary or successor is appointed for or on behalf of a notary public or a deceased notary public under applicable law, that person shall retain the recording under paragraph (2)(B)(ii), unless—

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

(B)(i) under applicable law of the notary public’s State, that person may transmit the recording to an office, archive, or repository approved or designated by the State; and

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

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

(A) the record shall—

(i) be intended for filing with, or relate to a matter before, a court, govern-
mental entity, public official, or other entity that is subject to the jurisdiction of the United States; or

(ii) involve property located in the territorial jurisdiction of the United States or a transaction substantially connected to the United States; and

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

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

(1) the individual—

(A) is a remotely located individual; and

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

(2)(A) the notarization was performed under or relates to a public act, record, or judicial proceeding of the notary public’s State; or
(B) the notarization occurs in or affects inter-state commerce.

SEC. 1864. RECOGNITION OF NOTARIZATIONS IN FEDERAL COURT.

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

(b) LEGAL EFFECT OF RECOGNIZED NOTARIZATION.—A notarization recognized under subsection (a) shall have the same effect under the State or Federal law applicable in the applicable judicial proceeding as if that notarization was validly performed—

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

(B) under this subtitle or other Federal law;

and

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

(A) with respect to—

(i) a tangible record; or

(ii) an electronic record; or

(B) for—
(i) an individual in the physical presence of the notarial officer; or

(ii) a remotely located individual.

(c) Presumption of Genuineness.—In a determination of the validity of a notarization for the purposes of subsection (a), the signature and title of an individual performing the notarization shall be prima facie evidence in any court of the United States that the signature of the individual is genuine and that the individual holds the designated title.

(d) Conclusive Evidence of Authority.—In a determination of the validity of a notarization for the purposes of subsection (a), the signature and title of the following notarial officers of a State shall conclusively establish the authority of the officer to perform the notarization:

(1) A notary public of that State.

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

SEC. 1865. RECOGNITION BY STATE OF NOTARIZATIONS PERFORMED UNDER AUTHORITY OF ANOTHER STATE.

(a) Recognition of Validity.—Each State shall recognize as valid under the laws of that State any notar-
(1) the notarization is valid under the laws of the notarial officer’s State or under this subtitle; and

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

(B) the notarization occurs in or affects interstate commerce.

(b) Legal Effect of Recognized Notarization.—A notarization recognized under subsection (a) shall have the same effect under the laws of the recognizing State as if that notarization was validly performed by a notarial officer of the recognizing State, without regard to whether the notarization was performed—

(1) with respect to—

(A) a tangible record; or

(B) an electronic record; or

(2) for—

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

(B) a remotely located individual.

(c) Presumption of Genuineness.—In a determination of the validity of a notarization for the purposes
of subsection (a), the signature and title of an individual performing a notarization shall be prima facie evidence in any State court or judicial proceeding that the signature is genuine and that the individual holds the designated title.

(d) **CONCLUSIVE EVIDENCE OF AUTHORITY.**—In a determination of the validity of a notarization for the purposes of subsection (a), the signature and title of the following notarial officers of a State shall conclusively establish the authority of the officer to perform the notarization:

(1) A notary public of that State.

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

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

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

(1) with respect to an electronic record;

(2) for a remotely located individual; or

(3) using a technology that the notary public has not selected.
SEC. 1867. VALIDITY OF NOTARIZATIONS; RIGHTS OF AGGRIEVED PERSONS NOT AFFECTED; STATE LAWS ON THE PRACTICE OF LAW NOT AFFECTED.

(a) VALIDITY NOT AFFECTED.—The failure of a notary public to meet a requirement under section 1862 or 1863 in the performance of a notarization, or the failure of a notarization to conform to a requirement under section 1862 or 1863, shall not invalidate or impair the validity or recognition of the notarization.

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

(1) that a person did not, with present intent to authenticate or adopt a record, execute a signature on the record;

(2) that an individual was incompetent, lacked authority or capacity to authenticate or adopt a record, or did not knowingly and voluntarily authenticate or adopt a record; or
(3) of fraud, forgery, mistake, misrepresentation, impersonation, duress, undue influence, or other invalidating cause.

(c) RULE OF CONSTRUCTION.—Nothing in this subtitle may be construed to affect a State law governing, authorizing, or prohibiting the practice of law.

SEC. 1868. EXCEPTION TO PREEMPTION.

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

(1) either—

(A) constitutes an enactment or adoption of the Revised Uniform Law on Notarial Acts, as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 2018 or the Revised Uniform Law on Notarial Acts, as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 2021, except that a modification to such Law enacted or adopted by a State shall be preempted to the extent such modification—
(i) is inconsistent with a provision of section 1862 or subsection (a) or (b) of section 1863, as applicable; or

(ii) would not be permitted under subparagraph (B); or

(B) specifies additional or alternative procedures or requirements for the performance of notarizations with respect to electronic records or for remotely located individuals, if those additional or alternative procedures or requirements—

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

(ii) do not accord greater legal effect to the implementation or application of a specific technology or technical specification for performing those notarizations; and

(2) requires the retention of an audio and visual recording of the performance of a notarization for a remotely located individual for a period of not less than 5 years after the recording is created.

(b) RULE OF CONSTRUCTION.—Nothing in section 1864 or 1865 may be construed to preclude the recogni-
tion of a notarization under applicable State law, regard-
less of whether such State law is consistent with section
1864 or 1865.

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

(a) State Standards of Care; Authority of
State Regulatory Officials.—Nothing in this sub-
title may be construed to prevent a State, or a notarial
regulatory official of a State, from—

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

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

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

(4) prohibiting a notary public from performing
a notarization under section 1862 or 1863 as a
sanction for a breach of duty or standard of care or for official misconduct.

(b) SPECIAL COMMISSIONS OR AUTHORIZATIONS CREATED BY A STATE; SANCTION FOR BREACH OR OFFICIAL MISCONDUCT.—A notary public may not perform a notarization under section 1862 or 1863 if—

(1)(A) the notary public’s State has enacted a law that creates or designates a class or type of commission or appointment, or requires an endorsement or other authorization to be received by a notary public, as a condition on the authority to perform notarizations with respect to electronic records or for remotely located individuals; and

(B) the commission or appointment of the notary public is not of the class or type or the notary public has not received the endorsement or other authorization; or

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

SEC. 1870. SEVERABILITY.

If any provision of this subtitle or the application of such provision to any person or circumstance is held to
be invalid or unconstitutional, the remainder of this sub-

title and the application of the provisions thereof to other

persons or circumstances shall not be affected by that
holding.