AMENDMENT NO.__________ Calendar No.______

Purpose: In the nature of a substitute.


S. 4159

To amend the Electronic Signatures in Global and National Commerce Act to accommodate emerging technologies.

Referred to the Committee on ________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. THUNE

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “E-SIGN Modernization
5 Act of 2020”.

6 SEC. 2. REQUIREMENTS FOR CONSENT TO ELECTRONIC
7 DISCLOSURES.

8 (a) IN GENERAL.—Title I of the Electronic Signa-
9tures in Global and National Commerce Act (15 U.S.C.
10 7001 et seq.) is amended—

11 (1) in section 101(c) (15 U.S.C. 7001(c))—
(A) in paragraph (1), by striking subparagraphs (C) and (D) and inserting the following:

"(C) the consumer, prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

"(D) after the consent of a consumer in accordance with subparagraph (A), if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record provides the consumer with a statement of—

"(i) the revised hardware and software requirements for access to and retention of the electronic records; and

"(ii) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under subparagraph (B)(i)."; (B) by striking paragraph (3); and
(C) by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively;

(2) by striking section 105 (15 U.S.C. 7005); and

(3) by redesignating sections 106 and 107 (15 U.S.C. 7006, 7001 note) as sections 105 and 106, respectively.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—


(2) Electronic Fund Transfer Act.—Section 920(g)(2)(A) of the Electronic Fund Transfer Act (15 U.S.C. 1693o-1(g)(2)(A)) is amended by striking “section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))” and inserting “section 105(2) of the Elec-
tronic Signatures in Global and National Commerce Act".

(3) ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.—The Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.) is amended—

(A) in section 201(a)(2) (15 U.S.C. 7021(a)(2)), by striking "section 106" and inserting "section 105"; and

(B) in section 301(e) (15 U.S.C. 7031(e)), by striking "section 106" and inserting "section 105".

(c) RULE OF CONSTRUCTION.—Nothing in this section, or the amendments made by this section, may be construed as affecting the consent provided by any consumer under section 101(e) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001(e)) before the date of enactment of this Act.