

1 Introduced by Committee on Government Operations

2 Date:

3 Subject: Professions and occupations; Office of Professional Regulation;
4 notaries public; notarial acts

5 Statement of purpose of bill as introduced: This bill proposes to require
6 notaries public to be commissioned and regulated by the Office of Professional
7 Regulation.

8 An act relating to regulating notaries public

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 Sec. 1. 26 V.S.A. chapter 103 is added to read:

11 CHAPTER 103. NOTARIES PUBLIC

12 Subchapter 1. General Provisions

13 § 5301. SHORT TITLE

14 This chapter may be cited as the Uniform Law on Notarial Acts.

15 § 5302. UNIFORMITY OF APPLICATION AND CONSTRUCTION

16 In applying and construing this uniform act, consideration shall be given to
17 the need to promote uniformity of the law with respect to its subject matter
18 among states that enact it.

1 § 5303. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
2 NATIONAL COMMERCE ACT

3 This act modifies, limits, and supersedes the Electronic Signatures in Global
4 and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify,
5 limit, or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize
6 electronic delivery of any of the notices described in Section 103(b) of that act,
7 15 U.S.C. § 7003(b).

8 § 5304. DEFINITIONS

9 As used in this chapter:

10 (1) “Acknowledgment” means a declaration by an individual before a
11 notarial officer that the individual has signed a record for the purpose stated in
12 the record and, if the record is signed in a representative capacity, that the
13 individual signed the record with proper authority and signed it as the act of
14 the individual or entity identified in the record.

15 (2) “Electronic” means relating to technology having electrical, digital,
16 magnetic, wireless, optical, electromagnetic, or similar capabilities.

17 (3) “Electronic signature” means an electronic symbol, sound, or
18 process attached to or logically associated with a record and executed or
19 adopted by an individual with the intent to sign the record.

1 (4) “In a representative capacity” means acting as:

2 (A) an authorized officer, agent, partner, trustee, or other
3 representative for a person other than an individual;

4 (B) a public officer, personal representative, guardian, or other
5 representative, in the capacity stated in a record;

6 (C) an agent or attorney-in-fact for a principal; or

7 (D) an authorized representative of another in any other capacity.

8 (5) “Notarial act” means an act, whether performed with respect to a
9 tangible or electronic record, that a notarial officer may perform under the law
10 of this State. The term includes taking an acknowledgment, administering an
11 oath or affirmation, taking a verification on oath or affirmation, witnessing or
12 attesting a signature, certifying or attesting a copy, and noting a protest of a
13 negotiable instrument.

14 (6) “Notarial officer” means a notary public or other individual
15 authorized to perform a notarial act.

16 (7) “Notary public” means an individual commissioned to perform a
17 notarial act by the Office.

18 (8) “Office” means the Office of Professional Regulation within the
19 Office of the Secretary of State.

1 (9) “Official stamp” means a physical image affixed to or embossed on
2 a tangible record or an electronic image attached to or logically associated with
3 an electronic record.

4 (10) “Person” means an individual, corporation, business trust, statutory
5 trust, estate, trust, partnership, limited liability company, association, joint
6 venture, public corporation, government or governmental subdivision, agency,
7 or instrumentality, or any other legal or commercial entity.

8 (11) “Record” means information that is inscribed on a tangible medium
9 or that is stored in an electronic or other medium and is retrievable in
10 perceivable form.

11 (12) “Sign” means, with present intent to authenticate or adopt a record:

12 (A) to execute or adopt a tangible symbol; or

13 (B) to attach to or logically associate with the record an electronic
14 symbol, sound, or process.

15 (13) “Signature” means a tangible symbol or an electronic signature that
16 evidences the signing of a record.

17 (14) “Stamping device” means:

18 (A) a physical device capable of affixing to or embossing on a
19 tangible record an official stamp; or

20 (B) an electronic device or process capable of attaching to or
21 logically associating with an electronic record an official stamp.

1 (15) “State” means a state of the United States, the District of Columbia,
2 Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession
3 subject to the jurisdiction of the United States.

4 (16) “Verification on oath or affirmation” means a declaration, made by
5 an individual on oath or affirmation before a notarial officer, that a statement
6 in a record is true.

7 § 5305. EXEMPTIONS

8 (a) Generally.

9 (1) The persons set forth in subdivision (2) of this subsection, when
10 acting within the scope of their official duties, are exempt from all of the
11 requirements of this chapter, except for the requirements:

12 (A) to apply for a commission as set forth in section 5341(a),
13 (b)(1)–(3), (c), (d), and (e) of this chapter; and

14 (B) unless exempted under subsection (c) of this section, to pay the
15 fee set forth in section 5325 of this chapter:

16 (2)(A) Persons employed by the Judiciary, including judges, Superior
17 Court clerks, court operations managers, Probate registers, case managers,
18 docket clerks, and after-hours relief from abuse contract employees.

19 (B) Persons employed as law enforcement officers certified under
20 20 V.S.A. chapter 151; who are noncertified constables; or who are employed
21 by a Vermont law enforcement agency; the Department of Public Safety, of

1 Fish and Wildlife, of Motor Vehicles, of Liquor Control, or for Children and
2 Families; the Office of the Defender General; the Office of the Attorney
3 General; or a State’s Attorney or Sheriff.

4 (3) As used in subdivision (1) of this subsection, “acting within the
5 scope of official duties” means that a person is notarizing a document that:

6 (A) he or she believes is related to the execution of his or her duties
7 and responsibilities of employment or is the type of document that other
8 employees notarize in the course of employment;

9 (B) is useful or of assistance to any person or entity identified in
10 subdivision (2) of this subsection;

11 (C) is required, requested, created, used, submitted, or relied upon by
12 any person or entity identified in subdivision (2) of this subsection (a);

13 (D) is necessary in order to assist in the representation, care, or
14 protection of a person or the State;

15 (E) is necessary in order to protect the public or property;

16 (F) is necessary to represent or assist crime victims in receiving
17 restitution or other services;

18 (G) relates to a Vermont or federal court rule or statute governing any
19 criminal, postconviction, mental health, family, juvenile, civil, probate,
20 Judicial Bureau, Environmental Division, or Supreme Court matter; or

1 (H) relates to a matter subject to Title 4, 12, 13, 15, 18, 20, 23, or 33
2 of the Vermont Statutes Annotated.

3 (b) Attorneys. Attorneys licensed and in good standing in this State are
4 exempt from:

5 (1) the examination requirement set forth in subsection 5341(b) of this
6 chapter; and

7 (2) the continuing education requirement set forth in section 5343 of this
8 chapter.

9 (c) Fees. The following persons are exempt from the fee set forth in
10 section 5325 of this chapter:

11 (1) a judge, clerk, or other court staff, as designated by the Court
12 Administrator;

13 (2) State’s Attorneys and their deputies;

14 (3) justices of the peace and town clerks and their assistants; and

15 (4) State Police officers, municipal police officers, fish and game
16 wardens, sheriffs and deputy sheriffs, motor vehicle inspectors, employees of
17 the Department of Corrections, and employees of the Department for Children
18 and Families.

1 Subchapter 2. Administration

2 § 5321. SECRETARY OF STATE'S OFFICE DUTIES

3 The Office shall:

4 (1) provide general information to applicants for commissioning as a
5 notary public;

6 (2) administer fees as provided under section 5325 of this chapter;

7 (3) explain appeal procedures to notaries public and applicants and
8 explain complaint procedures to the public;

9 (4) receive applications for commissioning, review applications, refer
10 applications for commissioning to the assistant judges in the county of
11 jurisdiction, and renew commissions;

12 (5) refer all disciplinary matters to the assistant judges in the county of
13 jurisdiction; and

14 (6) impose administrative penalties, issue warnings or reprimands, or
15 revoke, suspend, reinstate, or condition commissions, as ordered by the
16 assistant judges.

17 § 5322. ASSISTANT JUDGE'S DUTIES

18 The assistant judges in a county of jurisdiction shall:

19 (1) receive applications for commissioning from the Secretary of State's
20 office and commission applicants;

1 (2) receive disciplinary matters referred by the Secretary of State's
2 office; and

3 (3) impose administrative penalties, issue warnings or reprimands, or
4 revoke, suspend, reinstate, or condition commissions after notice and an
5 opportunity for a hearing.

6 § 5323. ADVISOR APPOINTEES

7 (a) The Secretary of State shall appoint two notaries public to serve as
8 advisors in matters relating to notarial acts. The advisors shall be appointed
9 for staggered five-year terms and serve at the pleasure of the Secretary. One of
10 the initial appointments shall be for less than a five-year term.

11 (b) Each appointee shall have at least three years of experience as a notary
12 public during the period immediately preceding appointment and shall be
13 actively commissioned in Vermont and remain in good standing during
14 incumbency.

15 (c) The Office shall seek the advice of the advisor appointees in carrying
16 out the provisions of this chapter. The appointees shall be entitled to
17 compensation and reimbursement of expenses as set forth in 32 V.S.A. § 1010
18 for attendance at any meeting called by the Office for this purpose.

1 § 5324. RULES

2 (a) The Office, with the advice of the advisor appointees and the assistant
3 judges, may adopt rules to implement this chapter. The rules may:

4 (1) prescribe the manner of performing notarial acts regarding tangible
5 and electronic records;

6 (2) include provisions to ensure that any change to or tampering with a
7 record bearing a certificate of a notarial act is self-evident;

8 (3) include provisions to ensure integrity in the creation, transmittal,
9 storage, or authentication of electronic records or signatures;

10 (4) prescribe the process of granting, renewing, conditioning, denying,
11 suspending, or revoking or otherwise disciplining a notary public commission
12 and assuring the trustworthiness of an individual holding a commission as
13 notary public; and

14 (5) include provisions to prevent fraud or mistake in the performance of
15 notarial acts.

16 (b) Rules adopted regarding the performance of notarial acts with respect to
17 electronic records may not require, or accord greater legal status or effect to,
18 the implementation or application of a specific technology or technical
19 specification. In adopting, amending, or repealing rules regarding notarial acts
20 with respect to electronic records, the Office shall consider, as far as is
21 consistent with this chapter:

1 (1) the most recent standards regarding electronic records promulgated
2 by national bodies, such as the National Association of Secretaries of State;

3 (2) standards, practices, and customs of other jurisdictions that
4 substantially enact this chapter; and

5 (3) the views of governmental officials and entities and other interested
6 persons.

7 § 5325. FEES

8 For the issuance of a commission as a notary public, the Secretary of State
9 shall collect a fee of \$30.00, of which \$9.00 shall accrue to the State, \$9.00
10 shall accrue to the county, and \$12.00 shall accrue to the Secretary of State.

11 Subchapter 3. Commissions

12 § 5341. COMMISSION AS NOTARY PUBLIC; QUALIFICATIONS; NO
13 IMMUNITY OR BENEFIT

14 (a) An individual qualified under subsection (b) of this section may apply
15 to the Office for a commission as a notary public. The applicant shall comply
16 with and provide the information required by rules adopted by the Office and
17 pay the application fee set forth in section 5325 of this chapter.

18 (b) An applicant for a commission as a notary public shall:

19 (1) be at least 18 years of age;

20 (2) be a citizen or permanent legal resident of the United States;

1 (3) be a resident of or have a place of employment or practice in
2 this State;

3 (4) not be disqualified to receive a commission under section 5242 of
4 this chapter; and

5 (5) pass a basic examination approved by the Office based on the
6 statutes, rules, and ethics relevant to notarial acts.

7 (c) Before issuance of a commission as a notary public, an applicant for the
8 commission shall execute an oath of office and submit it to the Office.

9 (d) Upon compliance with this section, the Office, with the approval of the
10 assistant judges in the county of jurisdiction, shall issue a commission as a
11 notary public to an applicant for a term of two years.

12 (e) A commission to act as a notary public authorizes the notary public to
13 perform notarial acts. The commission does not provide the notary public any
14 immunity or benefit conferred by law of this State on public officials or
15 employees.

16 § 5342. GROUNDS TO DENY, REFUSE TO RENEW, REVOKE,
17 SUSPEND, OR CONDITION COMMISSION OF NOTARY

18 PUBLIC

19 (a) The Office, with the approval of the assistant judges in the county of
20 jurisdiction, may deny, refuse to renew, revoke, suspend, or impose a condition
21 on a commission as notary public for any act or omission that demonstrates the

1 individual lacks the honesty, integrity, competence, or reliability to act as a
2 notary public, including:

3 (1) failure to comply with this chapter;

4 (2) a fraudulent, dishonest, or deceitful misstatement or omission in the
5 application for a commission as a notary public submitted to the Office;

6 (3) a conviction of the applicant or notary public of any felony or a
7 crime involving fraud, dishonesty, or deceit;

8 (4) a finding against, or admission of liability by, the applicant or notary
9 public in any legal proceeding or disciplinary action based on the applicant's
10 or notary public's fraud, dishonesty, or deceit;

11 (5) failure by the notary public to discharge any duty required of a
12 notary public, whether by this chapter, rules of the Office, or any federal or
13 State law;

14 (6) use of false or misleading advertising or representation by the notary
15 public representing that the notary has a duty, right, or privilege that the notary
16 does not have;

17 (7) violation by the notary public of a rule of the Office regarding a
18 notary public;

19 (8) denial, refusal to renew, revocation, suspension, or conditioning of a
20 notary public commission in another state; or

21 (9) committing any of the conduct set forth in 3 V.S.A. § 129a(a).

1 (b) If the Office, with the approval of the assistant judges in the county of
2 jurisdiction, denies, refuses to renew, revokes, suspends, or imposes conditions
3 on a commission as a notary public, the applicant or notary public is entitled to
4 timely notice and hearing in accordance with 3 V.S.A. chapter 25.

5 § 5343. RENEWALS; CONTINUING EDUCATION

6 (a) Commissions shall be renewed every two years upon payment of the fee
7 set forth in section 5325 of this chapter, provided the person applying for
8 renewal completes continuing education approved by the Office, which shall
9 not be required to exceed more than two hours, during the preceding two-year
10 period.

11 (b) The Office, with the advice of the advisor appointees, shall establish by
12 rule guidelines and criteria for continuing education credit.

13 (c) Biennially, the Office shall provide a renewal notice to each licensee.
14 Upon receipt of a licensee's completed renewal, fee, and evidence of
15 eligibility, the Office shall issue to him or her a new commission.

16 § 5344. DATABASE OF NOTARIES PUBLIC

17 The Office shall maintain an electronic database of notaries public:

18 (1) through which a person may verify the authority of a notary public to
19 perform notarial acts; and

20 (2) that indicates whether a notary public has notified the Office that the
21 notary public will be performing notarial acts on electronic records.

1 § 5345. PROHIBITIONS; OFFENSES

2 (a) A person shall not perform or attempt to perform a notarial act or hold
3 himself or herself out as being able to do so in this State without first having
4 been commissioned.

5 (b) A person shall not use in connection with the person's name any letters,
6 words, or insignia indicating or implying that the person is a notary public
7 unless commissioned in accordance with this chapter.

8 (c) A person shall not perform or attempt to perform a notarial act while his
9 or her commission has been revoked or suspended.

10 (d) A person who violates a provision of this section shall be subject to a
11 fine of not more than \$5,000.00 or imprisonment for not more than one year, or
12 both. Prosecution may occur upon the complaint of the Attorney General or a
13 State's Attorney and shall not act as a bar to civil or administrative proceedings
14 involving the same conduct.

15 (e) A commission as a notary public shall not authorize an individual to
16 assist a person in drafting legal records, give legal advice, or otherwise
17 practice law.

18 (f) Except as otherwise allowed by law, a notary public shall not withhold
19 access to or possession of an original record provided by a person that seeks
20 performance of a notarial act by the notary public.

1 Subchapter 4. Notarial Acts

2 § 5361. NOTARIAL ACTS IN THIS STATE; AUTHORITY TO PERFORM

3 (a) A notarial act may only be performed in this State by a notary public
4 commissioned under this chapter.

5 (b) The signature and title of an individual performing a notarial act in this
6 State are prima facie evidence that the signature is genuine and that the
7 individual holds the designated title.

8 § 5362. AUTHORIZED NOTARIAL ACTS

9 (a) A notarial officer may perform a notarial act authorized by this chapter
10 or otherwise by law of this State.

11 (b) A notarial officer shall not perform a notarial act with respect to a
12 record to which the officer or the officer's spouse is a party, or in which either
13 of them has a direct beneficial interest. A notarial act performed in violation of
14 this subsection is voidable.

15 § 5363. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS

16 (a) Acknowledgments. A notarial officer who takes an acknowledgment of
17 a record shall determine, from personal knowledge or satisfactory evidence of
18 the identity of the individual, that the individual appearing before the officer
19 and making the acknowledgment has the identity claimed and that the
20 signature on the record is the signature of the individual.

1 (b) Verifications. A notarial officer who takes a verification of a statement
2 on oath or affirmation shall determine, from personal knowledge or
3 satisfactory evidence of the identity of the individual, that the individual
4 appearing before the officer and making the verification has the identity
5 claimed and that the signature on the statement verified is the signature of the
6 individual.

7 (c) Signatures. A notarial officer who witnesses or attests to a signature
8 shall determine, from personal knowledge or satisfactory evidence of the
9 identity of the individual, that the individual appearing before the officer and
10 signing the record has the identity claimed.

11 (d) Copies. A notarial officer who certifies or attests a copy of a record or
12 an item that was copied shall determine that the copy is a full, true, and
13 accurate transcription or reproduction of the record or item.

14 (e) Protests. A notarial officer who makes or notes a protest of a negotiable
15 instrument shall determine the matters set forth in 9A V.S.A. § 3-505(b)
16 (protest; certificate of dishonor).

17 § 5364. PERSONAL APPEARANCE REQUIRED

18 If a notarial act relates to a statement made in or a signature executed on a
19 record, the individual making the statement or executing the signature shall
20 appear personally before the notarial officer.

1 § 5365. IDENTIFICATION OF INDIVIDUAL

2 (a) Personal knowledge. A notarial officer has personal knowledge of the
3 identity of an individual appearing before the officer if the individual is
4 personally known to the officer through dealings sufficient to provide
5 reasonable certainty that the individual has the identity claimed.

6 (b) Satisfactory evidence. A notarial officer has satisfactory evidence of
7 the identity of an individual appearing before the officer if the officer can
8 identify the individual:

9 (1) by means of:

10 (A) a passport, driver’s license, or government issued non-driver
11 identification card, which is current or expired not more than three years before
12 performance of the notarial act; or

13 (B) another form of government identification issued to an
14 individual, which is current or expired not more than three years before
15 performance of the notarial act, contains the signature or a photograph of the
16 individual, and is satisfactory to the officer; or

17 (2) by a verification on oath or affirmation of a credible witness
18 personally appearing before the officer and known to the officer or whom the
19 officer can identify on the basis of a passport, driver’s license, or government
20 issued non-driver identification card, which is current or expired not more than
21 three years before performance of the notarial act.

1 (c) Additional information. A notarial officer may require an individual to
2 provide additional information or identification credentials necessary to assure
3 the officer of the identity of the individual.

4 § 5366. SIGNATURE IF INDIVIDUAL UNABLE TO SIGN

5 If an individual is physically unable to sign a record, the individual may
6 direct an individual other than the notarial officer to sign the individual’s name
7 on the record. The notarial officer shall insert “Signature affixed by (name of
8 other individual) at the direction of (name of individual)” or words of similar
9 import.

10 § 5367. CERTIFICATE OF NOTARIAL ACT

11 (a) A notarial act shall be evidenced by a certificate. The certificate shall:

12 (1) be executed contemporaneously with the performance of the
13 notarial act;

14 (2) be signed and dated by the notarial officer and be signed in the same
15 manner as on file with the Office;

16 (3) identify the jurisdiction in which the notarial act is performed;

17 (4) contain the title of office of the notarial officer; and

18 (5) indicate the date of expiration of the officer’s commission.

19 (b)(1) If a notarial act regarding a tangible record is performed by a notary
20 public, an official stamp shall be affixed to or embossed on the certificate.

1 (2) If a notarial act regarding an electronic record is performed by a
2 notarial officer and the certificate contains the information specified in
3 subdivisions (a)(2)–(4) of this section, an official stamp may be attached to or
4 logically associated with the certificate.

5 (c) A certificate of a notarial act is sufficient if it meets the requirements of
6 subsections (a) and (b) of this section and:

7 (1) is in a short form as set forth in section 5068 of this chapter;

8 (2) is in a form otherwise permitted by the law of this State;

9 (3) is in a form permitted by the law applicable in the jurisdiction in
10 which the notarial act was performed; or

11 (4) sets forth the actions of the notarial officer and the actions are
12 sufficient to meet the requirements of the notarial act as provided in sections
13 5362–5364 of this chapter or a law of this State other than this chapter.

14 (d) By executing a certificate of a notarial act, a notarial officer certifies
15 that the officer has complied with the requirements and made the
16 determinations specified in sections 5363–5365 of this chapter.

17 (e) A notarial officer shall not affix the officer’s signature to, or logically
18 associate it with, a certificate until the notarial act has been performed.

19 (f)(1) If a notarial act is performed regarding a tangible record, a certificate
20 shall be part of, or securely attached to, the record.

1 (2) If a notarial act is performed regarding an electronic record, the
2 certificate shall be affixed to, or logically associated with, the electronic
3 record.

4 (3) If the Office has established standards by rule pursuant to section
5 5324 of this chapter for attaching, affixing, or logically associating the
6 certificate, the process shall conform to those standards.

7 § 5368. SHORT-FORM CERTIFICATES

8 The following short-form certificates of notarial acts shall be sufficient for
9 the purposes indicated, if completed with the information required by
10 subsections 5367(a) and (b) of this chapter:

11 (1) For an acknowledgment in an individual capacity:

12 State of _____ [County] of _____

13 This record was acknowledged before me on _____ by _____

14 Date _____ Name(s) of individual(s) _____

15 Signature of notarial officer

16 Stamp [_____]

17 Title of office _____ [My commission expires: _____]

18 (2) For an acknowledgment in a representative capacity:

19 State of _____ [County] of _____

20 This record was acknowledged before me on _____ by _____

1 Date _____ Name(s) of individual(s) _____

2 as _____ (type of authority, such as officer or

3 trustee) of _____ (name of party on behalf of

4 whom record was executed).

5 Signature of notarial officer

6 Stamp [_____]

7 Title of office _____ [My commission expires: _____]

8 (3) For a verification on oath or affirmation:

9 State of _____ [County] of _____

10 Signed and sworn to (or affirmed) before me on _____

11 by _____

12 Date _____

13 Name(s) of individual(s) making statement _____

14 Signature of notarial officer _____

15 Stamp [_____]

16 Title of office _____ [My commission expires: _____]

17 (4) For witnessing or attesting a signature:

18 State of _____ [County] of _____

19 Signed [or attested] before me on _____ by _____

20 Date _____ Name(s) of individual(s) _____

21 Signature of notarial officer

1 Stamp [_____]

2 Title of office _____ [My commission expires: _____]

3 (5) For certifying a copy of a record:

4 State of _____ [County] of _____

5 I certify that this is a true and correct copy of a record in the possession
6 of _____.

7 Dated _____

8 Signature of notarial officer

9 Stamp [_____]

10 Title of office _____ [My commission expires: _____]

11 § 5369. OFFICIAL STAMP

12 The official stamp of a notary public shall:

13 (1) include the notary public’s name, jurisdiction, and other information
14 required by the Office; and

15 (2) be capable of being copied together with the record to which it is
16 affixed or attached or with which it is logically associated.

17 § 5370. STAMPING DEVICE

18 (a) A notary public is responsible for the security of the notary public’s
19 stamping device and shall not allow another individual to use the device to
20 perform a notarial act.

1 (b) If a notary public’s stamping device is lost or stolen, the notary public
2 or the notary public’s personal representative or guardian shall notify promptly
3 the Office on discovering that the device is lost or stolen.

4 § 5371. [Reserved.]

5 § 5372. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL
6 ACT ON ELECTRONIC RECORD; SELECTION OF
7 TECHNOLOGY

8 (a) A notary public may select one or more tamper-evident technologies to
9 perform notarial acts with respect to electronic records. A person shall not
10 require a notary public to perform a notarial act with respect to an electronic
11 record with a technology that the notary public has not selected.

12 (b) Before a notary public performs the notary public’s initial notarial act
13 with respect to an electronic record, the notary public shall notify the Office
14 that the notary public will be performing notarial acts with respect to electronic
15 records and identify the technology the notary public intends to use. If the
16 Office has established standards by rule for approval of technology pursuant to
17 section 5323 of this chapter, the technology shall conform to the standards. If
18 the technology conforms to the standards, the Office shall approve the use of
19 the technology.

1 § 5373. AUTHORITY TO REFUSE TO PERFORM NOTARIAL ACT

2 (a) A notarial officer may refuse to perform a notarial act if the officer is
3 not satisfied that:

4 (1) the individual executing the record is competent or has the capacity
5 to execute the record; or

6 (2) the individual’s signature is knowingly and voluntarily made.

7 (b) A notarial officer may refuse to perform a notarial act unless refusal is
8 prohibited by law other than this chapter.

9 § 5374. VALIDITY OF NOTARIAL ACTS

10 (a) Except as otherwise provided in subsection 5373(b) of this chapter, the
11 failure of a notarial officer to perform a duty or meet a requirement specified in
12 this chapter shall not invalidate a notarial act performed by the notarial officer.

13 (b) The validity of a notarial act under this chapter shall not prevent an
14 aggrieved person from seeking to invalidate the record or transaction that is the
15 subject of the notarial act or from seeking other remedies based on law of this
16 State other than this chapter or law of the United States.

17 (c) This section does not validate a purported notarial act performed by an
18 individual who does not have the authority to perform notarial acts.

1 § 5375. NOTARIAL ACT IN ANOTHER STATE

2 (a) A notarial act performed in another state has the same effect under the
3 law of this State as if performed by a notarial officer of this State, if the act
4 performed in that state is performed by:

5 (1) a notary public of that state;

6 (2) a judge, clerk, or deputy clerk of a court of that state; or

7 (3) any other individual authorized by the law of that state to perform
8 the notarial act.

9 (b) The signature and title of an individual performing a notarial act in
10 another state are prima facie evidence that the signature is genuine and that the
11 individual holds the designated title.

12 (c) The signature and title of a notarial officer described in subdivision
13 (a)(1) or (2) of this section conclusively establish the authority of the officer to
14 perform the notarial act.

15 § 5376. NOTARIAL ACT UNDER AUTHORITY OF FEDERALLY

16 RECOGNIZED INDIAN TRIBE

17 (a) A notarial act performed under the authority and in the jurisdiction of a
18 federally recognized Indian tribe has the same effect as if performed by a
19 notarial officer of this State, if the act performed in the jurisdiction of the tribe
20 is performed by:

- 1 (1) a notary public of the tribe;
2 (2) a judge, clerk, or deputy clerk of a court of the tribe; or
3 (3) any other individual authorized by the law of the tribe to perform the
4 notarial act.

5 (b) The signature and title of an individual performing a notarial act under
6 the authority of and in the jurisdiction of a federally recognized Indian tribe are
7 prima facie evidence that the signature is genuine and that the individual holds
8 the designated title.

9 (c) The signature and title of a notarial officer described in subdivision
10 (a)(1) or (2) of this section conclusively establish the authority of the officer to
11 perform the notarial act.

12 § 5377. NOTARIAL ACT UNDER FEDERAL AUTHORITY

13 (a) A notarial act performed under federal law has the same effect under the
14 law of this State as if performed by a notarial officer of this State, if the act
15 performed under federal law is performed by:

16 (1) a judge, clerk, or deputy clerk of a court;
17 (2) an individual in military service or performing duties under the
18 authority of military service who is authorized to perform notarial acts under
19 federal law;

20 (3) an individual designated a notarizing officer by the U.S. Department
21 of State for performing notarial acts overseas; or

1 (4) any other individual authorized by federal law to perform the
2 notarial act.

3 (b) The signature and title of an individual acting under federal authority
4 and performing a notarial act are prima facie evidence that the signature is
5 genuine and that the individual holds the designated title.

6 (c) The signature and title of an officer described in subdivision (a)(1), (2),
7 or (3) of this section shall conclusively establish the authority of the officer to
8 perform the notarial act.

9 § 5378. EVIDENCE OF AUTHENTICITY OF NOTARIAL ACT

10 PERFORMED IN THIS STATE

11 (a) The authenticity of the official notarial seal and signature of a notary
12 may be evidenced by either:

13 (1) A certificate of authority from the Secretary of State authenticated as
14 necessary.

15 (2) An apostille from the Secretary of State in the form prescribed by the
16 Hague convention of October 5, 1961 abolishing the requirement of
17 legalization of foreign public documents.

18 (b) An apostille as specified by the Hague convention shall be attached to
19 any document that requires authentication and that is sent to a nation that has
20 signed and ratified this convention.

1 § 5379. FOREIGN NOTARIAL ACT

2 (a) In this section, “foreign state” means a government other than the
3 United States, a state, or a federally recognized Indian tribe.

4 (b) If a notarial act is performed under authority and in the jurisdiction of a
5 foreign state or constituent unit of the foreign state or is performed under the
6 authority of a multinational or international governmental organization, the act
7 has the same effect under the law of this State as if performed by a notarial
8 officer of this State.

9 (c) If the title of office and indication of authority to perform notarial acts
10 in a foreign state appears in a digest of foreign law or in a list customarily used
11 as a source for that information, the authority of an officer with that title to
12 perform notarial acts is conclusively established.

13 (d) The signature and official stamp of an individual holding an office
14 described in subsection (c) of this section are prima facie evidence that the
15 signature is genuine and the individual holds the designated title.

16 (e) An apostille in the form prescribed by the Hague Convention of
17 October 5, 1961, and issued by a foreign state party to the Convention
18 conclusively establishes that the signature of the notarial officer is genuine and
19 that the officer holds the indicated office.

20 (f) A consular authentication issued by an individual designated by the
21 U.S. Department of State as a notarizing officer for performing notarial acts

1 overseas and attached to the record with respect to which the notarial act is
2 performed conclusively establishes that the signature of the notarial officer is
3 genuine and that the officer holds the indicated office.

4 Sec. 2. REPEAL

5 The following are repealed:

6 (1) 24 V.S.A. chapter 5, subchapter 9 (notaries public);

7 (2) 32 V.S.A. § 1403(b) (county clerk; notaries public without charge
8 or fee);

9 (3) 32 V.S.A. § 1436 (fee for certification of appointment as notary
10 public); and

11 (4) 32 V.S.A. § 1759 (notaries public fees).

12 Sec. 3. APPLICABILITY; NOTARY PUBLIC COMMISSION IN EFFECT

13 (a)(1) This act shall apply to a notarial act performed on or after the
14 effective date of this act.

15 (2) A notary public, in performing notarial acts on and after the effective
16 date of this act, shall comply with the provisions of this act.

17 (b)(1) A commission as a notary public in effect on the effective date of
18 this act shall continue until its date of expiration.

19 (2) A notary public who applies to renew a commission as a notary
20 public on or after the effective date of this act shall comply with the provisions
21 of this act.

1 Sec. 4. SAVINGS CLAUSE

2 This act shall not affect the validity or effect of a notarial act performed
3 prior to the effective date of this act.

4 Sec. 5. EFFECTIVE DATE

5 This act shall take effect on July 1, 2018.