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H.206

Introduced by Committee on Government Operations

Date:

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

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

An act relating to regulating notaries public

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

~~Sec. 1. 3 V.S.A. § 122 is amended to read:~~

§ 122. OFFICE OF PROFESSIONAL REGULATION

An Office of Professional Regulation is created within the Office of the
Secretary of State. The Office shall have a director who shall be appointed by
the Secretary of State and shall be an exempt employee. The following boards
or professions are attached to the Office of Professional Regulation:

* * *

(36) ~~Expired.~~ Notaries Public

* * *

1 ~~Sec. 2. 26 V.S.A. chapter 95 is added to read:~~

2 CHAPTER 95. NOTARIES PUBLIC

3 Subchapter 1. General Provisions

4 § 5001. SHORT TITLE

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

6 § 5002. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

10 § 5003. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
11 NATIONAL COMMERCE ACT

12 This act modifies, limits, and supersedes the Electronic Signatures in Global
13 and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify,
14 limit, or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize
15 electronic delivery of any of the notices described in Section 103(b) of that act,
16 15 U.S.C. § 7003(b).

17 § 5004. DEFINITIONS

18 As used in this chapter:

19 (1) "Acknowledgment" means a declaration by an individual before a
20 notarial officer that the individual has signed a record for the purpose stated in
21 the record and, if the record is signed in a representative capacity, that the

1 ~~individual signed the record with proper authority and signed it as the act of~~
2 ~~the individual or entity identified in the record.~~

3 ~~(2) “Director” means the Director of the Office of Professional~~
4 ~~Regulation.~~

5 ~~(3) “Electronic” means relating to technology having electrical, digital,~~
6 ~~magnetic, wireless, optical, electromagnetic, or similar capabilities.~~

7 ~~(4) “Electronic signature” means an electronic symbol, sound, or~~
8 ~~process attached to or logically associated with a record and executed or~~
9 ~~adopted by an individual with the intent to sign the record.~~

10 ~~(5) “In a representative capacity” means acting as:~~

11 ~~(A) an authorized officer, agent, partner, trustee, or other~~
12 ~~representative for a person other than an individual;~~

13 ~~(B) a public officer, personal representative, guardian, or other~~
14 ~~representative, in the capacity stated in a record;~~

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

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

17 ~~(6) “Notarial act” means an act, whether performed with respect to a~~
18 ~~tangible or electronic record, that a notarial officer may perform under the law~~
19 ~~of this State. The term includes taking an acknowledgment, administering an~~
20 ~~oath or affirmation, taking a verification on oath or affirmation, witnessing or~~

1 ~~attesting a signature, certifying or attesting a copy, and noting a protest of a~~
2 negotiable instrument.

3 (7) "Notarial officer" means a notary public or other individual
4 authorized to perform a notarial act.

5 (8) "Notary public" means an individual commissioned to perform a
6 notarial act by the Office.

7 (9) "Office" means the Office of Professional Regulation.

8 (10) "Official stamp" means a physical image affixed to or embossed on
9 a tangible record or an electronic image attached to or logically associated with
10 an electronic record.

11 (11) "Person" means an individual, corporation, business trust, statutory
12 trust, estate, trust, partnership, limited liability company, association, joint
13 venture, public corporation, government or governmental subdivision, agency,
14 or instrumentality, or any other legal or commercial entity.

15 (12) "Record" means information that is inscribed on a tangible medium
16 or that is stored in an electronic or other medium and is retrievable in
17 perceivable form.

18 (13) "Sign" means, with present intent to authenticate or adopt a record:

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

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

1 ~~(14) "Signature" means a tangible symbol or an electronic signature that~~
2 evidences the signing of a record.

3 (15) "Stamping device" means:

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

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

8 (16) "State" means a state of the United States, the District of Columbia,
9 Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession
10 subject to the jurisdiction of the United States.

11 (17) "Verification on oath or affirmation" means a declaration, made by
12 an individual on oath or affirmation before a notarial officer, that a statement
13 in a record is true.

14 Subchapter 2. Administration

15 § 5021. DIRECTOR DUTIES

16 The Director shall:

17 (1) provide general information to applicants for commissioning as a
18 notary public;

19 (2) administer fees as provided under 3 V.S.A. § 125(b);

20 (3) explain appeal procedures to notaries public and applicants and
21 explain complaint procedures to the public;

1 ~~(4) receive applications for commissioning, commission applicants, and~~
2 renew commissions;

3 (5) refer all disciplinary matters to an administrative law officer; and

4 (6) impose administrative penalties, issue warnings or reprimands, or
5 revoke, suspend, reinstate, or condition commissions, as ordered by an
6 administrative law officer.

7 § 5022. ADVISOR APPOINTEES

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

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

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

1 ~~§ 5023. RULES~~

2 ~~(a) The Director, with the advice of the advisor appointees, may adopt rules~~
3 ~~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 Director 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 Subchapter 3. Commissions

8 § 5041. COMMISSION AS NOTARY PUBLIC; QUALIFICATIONS; NO
9 IMMUNITY OR BENEFIT

10 (a) An individual qualified under subsection (b) of this section may apply
11 to the Office for a commission as a notary public. The applicant shall comply
12 with and provide the information required by rules adopted by the Office and
13 pay the application fee set forth in 3 V.S.A. § 125.

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

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

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

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

19 (4) not be disqualified to receive a commission under section 5042 of
20 this chapter; and

1 ~~(5) pass an examination approved by the Director based on the statutes,~~
2 rules, and ethics relevant to notarial acts.

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

5 (d) Upon compliance with this section, the Office shall issue a commission
6 as a notary public to an applicant for a term of two years.

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

11 § 5042. GROUNDS TO DENY, REFUSE TO RENEW, REVOKE,
12 SUSPEND, OR CONDITION COMMISSION OF NOTARY
13 PUBLIC

14 (a) The Office may deny, refuse to renew, revoke, suspend, or impose a
15 condition on a commission as notary public for any act or omission that
16 demonstrates the individual lacks the honesty, integrity, competence, or
17 reliability to act as a notary public, including:

18 (1) failure to comply with this chapter;

19 (2) a fraudulent, dishonest, or deceitful misstatement or omission in the
20 application for a commission as a notary public submitted to the Office.

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

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

6 ~~(5) failure by the notary public to discharge any duty required of a~~
7 ~~notary public, whether by this chapter, rules of the Office, or any federal or~~
8 ~~State law;~~

9 ~~(6) use of false or misleading advertising or representation by the notary~~
10 ~~public representing that the notary has a duty, right, or privilege that the notary~~
11 ~~does not have;~~

12 ~~(7) violation by the notary public of a rule of the Office regarding a~~
13 ~~notary public;~~

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

16 ~~(9) violation of 3 V.S.A. § 129a.~~

17 ~~(b) If the Office denies, refuses to renew, revokes, suspends, or imposes~~
18 ~~conditions on a commission as a notary public, the applicant or notary public is~~
19 ~~entitled to timely notice and hearing in accordance with 3 V.S.A. chapter 25.~~

1 ~~§ 5043. RENEWALS; CONTINUING EDUCATION~~

2 ~~(a) Commissions shall be renewed every two years upon payment of the~~
3 ~~required fee, provided the person applying for renewal completes continuing~~
4 ~~education not to exceed more than four hours, approved by the Director, during~~
5 ~~the preceding two-year period.~~

6 ~~(b) The Director, with the advice of the advisor appointees, shall establish~~
7 ~~by rule guidelines and criteria for continuing education credit.~~

8 ~~(c) Biennially, the Director shall provide a renewal notice to each licensee.~~
9 ~~Upon receipt of a licensee's completed renewal, fee, and evidence of~~
10 ~~eligibility, the Director shall issue to him or her a new commission.~~

11 ~~§ 5044. DATABASE OF NOTARIES PUBLIC~~

12 ~~The Office shall maintain an electronic database of notaries public:~~

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

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

17 ~~§ 5045. PROHIBITIONS; OFFENSES~~

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

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

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

6 (d) A person who violates a provision of this section shall be subject to the
7 penalties provided in 3 V.S.A. § 127(c).

8 (e) A commission as a notary public shall not authorize an individual to:

9 (1) assist a person in drafting legal records, give legal advice, or
10 otherwise practice law;

11 (2) act as an immigration consultant or an expert on immigration
12 matters;

13 (3) represent a person in a judicial or administrative proceeding relating
14 to immigration to the United States, U.S. citizenship, or related matters; or

15 (4) receive compensation for performing any of the activities listed in
16 this subsection.

17 (f) A notary public, other than an attorney licensed to practice law in this
18 State, shall not use the term "notario" or "notario publico."

19 (g)(1) A notary public, other than an attorney licensed to practice law in
20 this State, shall not advertise or represent that the notary public may assist
21 persons in drafting legal records, give legal advice, or otherwise practice law.

1 ~~(2) If a notary public who is not an attorney licensed to practice law in~~
2 ~~this State in any manner advertises or represents that the notary public offers~~
3 ~~notarial services, whether orally or in a record, including broadcast media,~~
4 ~~print media, and the Internet, the notary public shall include the following~~
5 ~~statement, or an alternate statement authorized or required by Office, in the~~
6 ~~advertisement or representation, prominently and in each language used in the~~
7 ~~advertisement or representation: "I am not an attorney licensed to practice law~~
8 ~~in this State. I am not allowed to draft legal records, give advice on legal~~
9 ~~matters, including immigration, or charge a fee for those activities." If the~~
10 ~~form of advertisement or representation is not broadcast media, print media, or~~
11 ~~the Internet and does not permit inclusion of the statement required by this~~
12 ~~subsection because of size, it shall be displayed prominently or provided at the~~
13 ~~place of performance of the notarial act before the notarial act is performed.~~

14 ~~(h) Except as otherwise allowed by law, a notary public shall not withhold~~
15 ~~access to or possession of an original record provided by a person that seeks~~
16 ~~performance of a notarial act by the notary public.~~

17 Subchapter 4. Notarial Acts

18 § 5061. NOTARIAL ACTS IN THIS STATE; AUTHORITY TO PERFORM

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

1 ~~(b) The following individuals shall be commissioned only after meeting the~~
2 ~~requirements of this chapter, except that they shall not be required to pay the~~
3 ~~fee set forth in 3 V.S.A. § 125:~~

4 ~~(1) a judge, clerk, and deputy clerk of a court of this State;~~

5 ~~(2) justices of the peace and town clerks and their assistants;~~

6 ~~(3) a State Police officer, a municipal police officer, a fish and game~~
7 ~~warden, a sheriff or deputy sheriff, a motor vehicle inspector, an employee of~~
8 ~~the Department of Corrections, and an employee of the Department for~~
9 ~~Children and Families.~~

10 ~~(c) The signature and title of an individual performing a notarial act in this~~
11 ~~State are prima facie evidence that the signature is genuine and that the~~
12 ~~individual holds the designated title.~~

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

16 § 5062. AUTHORIZED NOTARIAL ACTS

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

19 (b) A notarial officer shall not perform a notarial act with respect to a
20 record to which the officer or the officer's spouse is a party, or in which either

1 ~~of them has a direct beneficial interest. A notarial act performed in violation of~~
2 this subsection is voidable.

3 § 5063. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS

4 (a) Acknowledgments. A notarial officer who takes an acknowledgment of
5 a record shall determine, from personal knowledge or satisfactory evidence of
6 the identity of the individual, that the individual appearing before the officer
7 and making the acknowledgment has the identity claimed and that the
8 signature on the record is the signature of the individual.

9 (b) Verifications. A notarial officer who takes a verification of a statement
10 on oath or affirmation shall determine, from personal knowledge or
11 satisfactory evidence of the identity of the individual, that the individual
12 appearing before the officer and making the verification has the identity
13 claimed and that the signature on the statement verified is the signature of the
14 individual.

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

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

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

4 § 5064. PERSONAL APPEARANCE REQUIRED

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

8 § 5065. IDENTIFICATION OF INDIVIDUAL

9 (a) Personal knowledge. A notarial officer has personal knowledge of the
10 identity of an individual appearing before the officer if the individual is
11 personally known to the officer through dealings sufficient to provide
12 reasonable certainty that the individual has the identity claimed.

13 (b) Satisfactory evidence. A notarial officer has satisfactory evidence of
14 the identity of an individual appearing before the officer if the officer can
15 identify the individual:

16 (1) by means of:

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

20 (B) another form of government identification issued to an
21 individual, which is current or expired not more than three years before

1 ~~performance of the notarial act, contains the signature or a photograph of the~~
2 individual, and is satisfactory to the officer; or

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

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

11 § 5066. SIGNATURE IF INDIVIDUAL UNABLE TO SIGN

12 If an individual is physically unable to sign a record, the individual may
13 direct an individual other than the notarial officer to sign the individual's name
14 on the record. The notarial officer shall insert "Signature affixed by (name of
15 other individual) at the direction of (name of individual)" or words of similar
16 import.

17 § 5067. CERTIFICATE OF NOTARIAL ACT

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

19 (1) be executed contemporaneously with the performance of the
20 notarial act;

- 1 ~~(2) be signed and dated by the notarial officer and be signed in the same~~
2 manner as on file with the Office;
- 3 (3) identify the jurisdiction in which the notarial act is performed;
4 (4) contain the title of office of the notarial officer; and
5 (5) indicate the date of expiration of the officer's commission.
- 6 (b)(1) If a notarial act regarding a tangible record is performed by a notary
7 public, an official stamp shall be affixed to or embossed on the certificate.
- 8 (2) If a notarial act regarding an electronic record is performed by a
9 notarial officer and the certificate contains the information specified in
10 subdivisions (a)(2)–(4) of this section, an official stamp may be attached to or
11 logically associated with the certificate.
- 12 (c) A certificate of a notarial act is sufficient if it meets the requirements of
13 subsections (a) and (b) of this section and:
- 14 (1) is in a short form as set forth in section 5068 of this chapter;
15 (2) is in a form otherwise permitted by the law of this State;
16 (3) is in a form permitted by the law applicable in the jurisdiction in
17 which the notarial act was performed; or
- 18 (4) sets forth the actions of the notarial officer and the actions are
19 sufficient to meet the requirements of the notarial act as provided in sections
20 5062–5064 of this chapter or a law of this State other than this chapter.

1 ~~(d) By executing a certificate of a notarial act, a notarial officer certifies~~
2 ~~that the officer has complied with the requirements and made the~~
3 ~~determinations specified in sections 5063–5065 of this chapter.~~

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

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

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

11 ~~(3) If the Office has established standards by rule pursuant to section~~
12 ~~5023 of this chapter for attaching, affixing, or logically associating the~~
13 ~~certificate, the process shall conform to those standards.~~

14 § 5068. SHORT FORM CERTIFICATES

15 The following short form certificates of notarial acts shall be sufficient for
16 the purposes indicated, if completed with the information required by
17 subsections 5067(a) and (b) of this chapter:

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

19 State of _____ [County] of _____

20 This record was acknowledged before me on _____ by _____

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

1 Signature of notarial officer _____

2 Stamp [_____]

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

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

5 State of _____ [County] of _____

6 This record was acknowledged before me on _____ by _____

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

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

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

10 whom record was executed).

11 Signature of notarial officer

12 Stamp [_____]

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

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

15 State of _____ [County] of _____

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

17 by _____

18 Date _____

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

20 Signature of notarial officer _____

21 Stamp [_____]

1 ~~Title of office _____ [My commission expires: _____]~~

2 (4) For witnessing or attesting a signature:

3 State of _____ [County] of _____

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

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

6 Signature of notarial officer

7 Stamp [_____]

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

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

10 State of _____ [County] of _____

11 I certify that this is a true and correct copy of a record in the possession

12 of _____.

13 Dated _____

14 Signature of notarial officer

15 Stamp [_____]

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

17 § 5069. OFFICIAL STAMP

18 The official stamp of a notary public shall:

19 (1) include the notary public's name, jurisdiction, and other information

20 required by the Office; and

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

3 § 5070. STAMPING DEVICE

4 (a) A notary public is responsible for the security of the notary public's
5 stamping device and shall not allow another individual to use the device to
6 perform a notarial act.

7 (b) If a notary public's stamping device is lost or stolen, the notary public
8 or the notary public's personal representative or guardian shall notify promptly
9 the Office on discovering that the device is lost or stolen.

10 § 5071. JOURNAL

11 (a) A notary public shall maintain a journal in which the notary public
12 chronicles all notarial acts that the notary public performs. The notary public
13 shall retain the journal for 10 years after the performance of the last notarial act
14 chronicled in the journal.

15 (b) A journal may be created on a tangible medium or in an electronic
16 format. A notary public shall maintain only one journal at a time to chronicle
17 all notarial acts, whether those notarial acts are performed regarding tangible
18 or electronic records.

19 (1) If the journal is maintained on a tangible medium, it shall be a
20 permanent, bound register with numbered pages.

1 ~~(2) If the journal is maintained in an electronic format, it shall be in a~~
2 permanent, tamper-evident electronic format complying with the rules of
3 the Office.

4 (c) An entry in a journal shall be made contemporaneously with the
5 performance of the notarial act and contain the following information:

6 (1) the date and time of the notarial act;

7 (2) a description of the record, if any, and type of notarial act;

8 (3) the full name and address of each individual for whom the notarial
9 act is performed;

10 (4) if identity of the individual is based on personal knowledge, a
11 statement to that effect;

12 (5) if identity of the individual is based on satisfactory evidence, a brief
13 description of the method of identification and the identification credential
14 presented, if any, including the date of issuance and expiration of any
15 identification credential; and

16 (6) the fee, if any, charged by the notary public.

17 (d) If a notary public's journal is lost or stolen, the notary public promptly
18 shall notify the Office on discovering that the journal is lost or stolen.

19 (e) On resignation from, or the revocation or suspension of, a notary
20 public's commission, the notary public shall retain the notary public's journal

1 ~~in accordance with subsection (e) of this section and inform the Office where~~
2 ~~the journal is located.~~

3 ~~(f) Instead of retaining a journal as provided in subsection (e) of this~~
4 ~~section, a current or former notary public may transmit the journal to the~~
5 ~~Office or a repository approved by the Office.~~

6 ~~(g) On the death or adjudication of incompetency of a current or former~~
7 ~~notary public, the notary public's personal representative or guardian or any~~
8 ~~other person knowingly in possession of the journal shall transmit it to the~~
9 ~~Office or a repository approved by the Office.~~

10 § 5072. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL
11 ACT ON ELECTRONIC RECORD; SELECTION OF
12 TECHNOLOGY.

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

17 ~~(b) Before a notary public performs the notary public's initial notarial act~~
18 ~~with respect to an electronic record, the notary public shall notify the Office~~
19 ~~that the notary public will be performing notarial acts with respect to electronic~~
20 ~~records and identify the technology the notary public intends to use. If the~~
21 ~~Office has established standards by rule for approval of technology pursuant to~~

1 ~~section 5023 of this chapter, the technology shall conform to the standards. If~~
2 the technology conforms to the standards, the Office shall approve the use of
3 the technology.

4 § 5073. AUTHORITY TO REFUSE TO PERFORM NOTARIAL ACT

5 (a) A notarial officer shall refuse to perform a notarial act if the officer is
6 not satisfied that:

7 (1) the individual executing the record is competent or has the capacity
8 to execute the record; or

9 (2) the individual's signature is knowingly and voluntarily made.

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

12 § 5074. VALIDITY OF NOTARIAL ACTS

13 (a) Except as otherwise provided in subsection 5073(b) of this chapter, the
14 failure of a notarial officer to perform a duty or meet a requirement specified in
15 this chapter shall not invalidate a notarial act performed by the notarial officer.

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

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

~~§ 5075. NOTARIAL ACT IN ANOTHER STATE~~

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

~~(1) a notary public of that state;~~

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

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

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

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

§ 5076. NOTARIAL ACT UNDER AUTHORITY OF FEDERALLY

RECOGNIZED INDIAN TRIBE

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

(1) a notary public of the tribe;

1 ~~(2) a judge, clerk, or deputy clerk of a court of the tribe; or~~

2 (3) any other individual authorized by the law of the tribe to perform the
3 notarial act.

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

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

11 § 5077. NOTARIAL ACT UNDER FEDERAL AUTHORITY

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

15 (1) a judge, clerk, or deputy clerk of a court;

16 (2) an individual in military service or performing duties under the
17 authority of military service who is authorized to perform notarial acts under
18 federal law;

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

1 ~~(1) 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 § 5078. FOREIGN NOTARIAL ACT

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

12 ~~(b) If a notarial act is performed under authority and in the jurisdiction of a~~
13 ~~foreign state or constituent unit of the foreign state or is performed under the~~
14 ~~authority of a multinational or international governmental organization, the act~~
15 ~~has the same effect under the law of this State as if performed by a notarial~~
16 ~~officer of this State.~~

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

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

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

8 ~~(f) A consular authentication issued by an individual designated by the~~
9 ~~U.S. Department of State as a notarizing officer for performing notarial acts~~
10 ~~overseas and attached to the record with respect to which the notarial act is~~
11 ~~performed conclusively establishes that the signature of the notarial officer is~~
12 ~~genuine and that the officer holds the indicated office.~~

13 Sec. 3. 3 V.S.A. § 125 is amended to read:

14 § 125. FEES

15 * * *

16 (b) Unless otherwise provided by law, the following fees shall apply to all
17 professions regulated by the Director in consultation with advisor appointees
18 under Title 26:

19 (1) Application for registration, \$75.00.

20 (2) Application for licensure or certification, \$100.00.

21 (3) Optician trainee registration, \$50.00.

1 ~~(4) Application for notary public commission, \$30.00.~~

2 ~~(5) Biennial renewal, \$200.00, except:~~

3 ~~(A) Biennial renewal for clinical social workers, \$150.00.~~

4 ~~(B) Biennial renewal for occupational therapists and assistants,~~
5 ~~\$150.00.~~

6 ~~(C) Biennial renewal for physical therapists and assistants, \$100.00.~~

7 ~~(D) Biennial renewal for optician trainees, \$100.00.~~

8 ~~(E) Biennial renewal for notaries public, \$30.00.~~

9 ~~* * *~~

10 Sec. 4. REPEAL

11 The following are repealed:

12 (1) 24 V.S.A. chapter 5, subchapter 9 (notaries public);

13 (2) 32 V.S.A. § 1403(b) (county clerk, notaries public without charge
14 or fee);

15 (3) 32 V.S.A. § 1436 (fee for certification of appointment as notary
16 public); and

17 (4) 32 V.S.A. § 1759 (notaries public fees).

18 Sec. 5. APPLICABILITY; NOTARY PUBLIC COMMISSION IN EFFECT

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

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

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

5 ~~(2) A notary public who applies to renew a commission as a notary~~
6 ~~public on or after the effective date of this act shall comply with the provisions~~
7 ~~of this act.~~

8 Sec. 6. SAVINGS CLAUSE.

9 ~~This act shall not affect the validity or effect of a notarial act performed~~
10 ~~prior to the effective date of this act.~~

11 Sec. 7. EFFECTIVE DATE

12 ~~This act shall take effect on July 1, 2016.~~

Sec. 1. 26 V.S.A. chapter 101 is added to read:

CHAPTER 101. NOTARIES PUBLIC

Subchapter 1. General Provisions

§ 5201. SHORT TITLE

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

§ 5202. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

§ 5203. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
NATIONAL COMMERCE ACT

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

§ 5204. DEFINITIONS

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

(8) “Office” means the Office of the Secretary of State.

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

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

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

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

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

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

(13) "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record.

(14) "Stamping device" means:

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

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

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

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

~~§ 5205. EXEMPTIONS~~

~~(a) Generally.~~

~~(1) The persons set forth in subdivision (2) of this subsection shall be exempt from the following requirements of this chapter:~~

~~(A) the examination set forth in § 5241(b);~~

~~(B) continuing education set forth in § 5243;~~

~~(C) the penalties set forth in § 5242;~~

~~(D) the certificate and official stamp described in § 5267, if acting within the scope of his or her official duties; and~~

~~(E) maintaining the journal described in § 5271, if acting within the scope of his or her official duties.~~

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

~~(B) Notaries public employed as law enforcement officers certified under 20 V.S.A. chapter 151, who are noncertified constables, or who are employed by Vermont law enforcement agencies; the Departments of Public Safety, of Fish and Wildlife, of Motor Vehicles, of Liquor Control, or for Children and Families; the Office of the Defender General; the Attorney General; or a State's Attorney or Sheriff.~~

~~(b) Attorneys. Attorneys licensed and in good standing in this State are exempt from the following requirements of this chapter:~~

~~(1) the examination requirement set forth in § 5241(b); and~~

~~(2) the continuing education requirement set forth in § 5243.~~

~~(c) Fees. The following persons are exempt from the fee required under section 5225 of this chapter:~~

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

~~(2) State's Attorneys and their deputies;~~

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

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

1 § 5205. EXEMPTIONS

2 (a) Generally.

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

6 (A) to apply for a commission as set forth in section 5241(a), (b)(1)-
7 (3), (c), (d), and (e) of this chapter; and

8 (B) unless exempted under subsection (c) of this section, to pay the
9 fee set forth in section 5225 of this chapter:

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

13 (B) Persons employed as law enforcement officers certified under
14 20 V.S.A. chapter 151; who are noncertified constables; or who are employed
15 by a Vermont law enforcement agency, the Departments of Public Safety, of
16 Fish and Wildlife, of Motor Vehicles, of Liquor Control, or for Children and
17 Families, the Office of the Defender General, the Office of the Attorney
18 General, or a State's Attorney or Sheriff.

19 (3) As used in subdivision (1) of this subsection, "acting within the
20 scope of official duties" means that a person is notarizing a document that:

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

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

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

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

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

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

13 (G) relates to a Vermont or federal court rule or statute governing
14 any criminal, post conviction, mental health, family, juvenile, civil, probate,
15 Judicial Bureau, Environmental Division, or Supreme Court matter; or

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

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

20 (1) the examination requirement set forth in subsection 5241(b) of this
21 chapter; and

1 (2) the continuing education requirement set forth in section 5243 of this
2 chapter.

3 (c) Fees. The following persons are exempt from the fee set forth in section
4 5225 of this chapter:

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

7 (2) State's Attorneys and their deputies;

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

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

Subchapter 2. Administration

§ 5221. SECRETARY OF STATE'S OFFICE DUTIES

The Office shall:

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

(2) administer fees as provided under section 5225 of this chapter;

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

(4) receive applications for commissioning, review applications, refer applications for commissioning to the Assistant Judges in the county of jurisdiction, and renew commissions;

(5) refer all disciplinary matters to the Assistant Judges in the county of jurisdiction; and

(6) impose administrative penalties, issue warnings or reprimands, or revoke, suspend, reinstate, or condition commissions, as ordered by the Assistant Judges.

§ 5222. ASSISTANT JUDGE'S DUTIES

The Assistant Judges in a county of jurisdiction shall:

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

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

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

§ 5223. ADVISOR APPOINTEES

(a) The Secretary of State shall appoint two notaries public to serve as advisors in matters relating to notarial acts. The advisors shall be appointed

for staggered five-year terms and serve at the pleasure of the Secretary. One of the initial appointments shall be for less than a five-year term.

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

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

§ 5224. RULES

(a) The Office, with the advice of the advisor appointees and the Assistant Judges, may adopt rules to implement this chapter. The rules may:

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

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

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

(4) prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking or otherwise disciplining a notary public commission

and assuring the trustworthiness of an individual holding a commission as notary public; and

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

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

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

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

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

§ 5225. FEES

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

Subchapter 3. Commissions

§ 5241. COMMISSION AS NOTARY PUBLIC; QUALIFICATIONS; NO
IMMUNITY OR BENEFIT

(a) An individual qualified under subsection (b) of this section may apply to the Office for a commission as a notary public. The applicant shall comply with and provide the information required by rules adopted by the Office and pay the application fee set forth in section 5225 of this chapter.

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

(1) be at least 18 years of age;

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

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

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

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

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

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

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

§ 5242. GROUNDS TO DENY, REFUSE TO RENEW, REVOKE, SUSPEND, OR CONDITION COMMISSION OF NOTARY PUBLIC

(a) The Office, with the approval of the Assistant Judges in the county of jurisdiction, may deny, refuse to renew, revoke, suspend, or impose a condition on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:

(1) failure to comply with this chapter;

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

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

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

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

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

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

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

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

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

§ 5243. RENEWALS; CONTINUING EDUCATION

(a) Commissions shall be renewed every two years upon payment of the fee set forth in section 5225 of this chapter, provided the person applying for renewal completes continuing education approved by the Office, which shall not be required to exceed more than two hours, during the preceding two-year period.

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

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

§ 5244. DATABASE OF NOTARIES PUBLIC

The Office shall maintain an electronic database of notaries public:

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

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

§ 5245. PROHIBITIONS; OFFENSES

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

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

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

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

(e) A commission as a notary public shall not authorize an individual to:

(1) assist a person in drafting legal records, give legal advice, or otherwise practice law;

(2) act as an immigration consultant or an expert on immigration matters;

(3) represent a person in a judicial or administrative proceeding relating to immigration to the United States, U.S. citizenship, or related matters; or

(4) receive compensation for performing any of the activities listed in this subsection.

(f) A notary public, other than an attorney licensed to practice law in this State, shall not use the term "notario" or "notario publico."

(g)(1) A notary public, other than an attorney licensed to practice law in this State, shall not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice, or otherwise practice law.

(2) If a notary public who is not an attorney licensed to practice law in this State in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media, and the Internet, the notary public shall include the following statement, or an alternate statement authorized or required by Office, in the advertisement or representation, prominently and in each language used in the advertisement or representation: "I am not an attorney licensed to practice law in this State. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities." If the form of advertisement or representation is not broadcast media, print media, or the Internet and does not permit inclusion of the statement required by this subsection because of size, it shall be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

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

Subchapter 4. Notarial Acts

§ 5261. NOTARIAL ACTS IN THIS STATE; AUTHORITY TO PERFORM

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

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

§ 5262. AUTHORIZED NOTARIAL ACTS

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

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

§ 5263. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS

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

(b) Verifications. A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity

claimed and that the signature on the statement verified is the signature of the individual.

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

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

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

§ 5264. PERSONAL APPEARANCE REQUIRED

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

§ 5265. IDENTIFICATION OF INDIVIDUAL

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

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

(1) by means of:

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

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

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

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

§ 5266. SIGNATURE IF INDIVIDUAL UNABLE TO SIGN

If an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The notarial officer shall insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import.

§ 5267. CERTIFICATE OF NOTARIAL ACT

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

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

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

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

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

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

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

(2) If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in

subdivisions (a)(2)–(4) of this section, an official stamp may be attached to or logically associated with the certificate.

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

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

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

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

(4) sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in sections 5262–5264 of this chapter or a law of this State other than this chapter.

(d) By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in sections 5263–5265 of this chapter.

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

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

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

(3) If the Office has established standards by rule pursuant to section 5224 of this chapter for attaching, affixing, or logically associating the certificate, the process shall conform to those standards.

§ 5268. SHORT FORM CERTIFICATES

The following short form certificates of notarial acts shall be sufficient for the purposes indicated, if completed with the information required by subsections 5267(a) and (b) of this chapter:

(1) For an acknowledgment in an individual capacity:

State of _____ [County] of _____

This record was acknowledged before me on _____ by _____

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

Signature of notarial officer _____

Stamp [_____]

Title of office _____ [My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

State of _____ [County] of _____

This record was acknowledged before me on _____ by _____

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

as _____ (type of authority, such as officer or

trustee) of _____ (name of party on behalf of

whom _____ record _____ was _____ executed).

Signature of notarial officer

Stamp [_____]

Title of office _____ [My commission expires: _____]

(3) For a verification on oath or affirmation:

State of _____ [County] of _____

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

by _____

Date _____

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

Signature of notarial officer _____

Stamp [_____]

Title of office _____ [My commission expires: _____]

(4) For witnessing or attesting a signature:

State of _____ [County] of _____

Signed [or attested] before me on _____ by _____

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

Signature of notarial officer

Stamp [_____]

Title of office _____ [My commission expires: _____]

(5) For certifying a copy of a record:

State of _____ [County] of _____

I certify that this is a true and correct copy of a record in the possession

of _____.

Dated _____

Signature of notarial officer

Stamp [_____]

Title of office _____ [My commission expires: _____]

§ 5269. OFFICIAL STAMP

The official stamp of a notary public shall:

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

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

§ 5270. STAMPING DEVICE

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

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

§ 5271. JOURNAL

(a) A notary public shall maintain a journal in which the notary public chronicles all notarial acts that the notary public performs. The notary public shall retain the journal for 10 years after the performance of the last notarial act chronicled in the journal.

(b) A journal may be created on a tangible medium or in an electronic format. A notary public shall maintain only one journal at a time to chronicle all notarial acts, whether those notarial acts are performed regarding tangible or electronic records.

(1) If the journal is maintained on a tangible medium, it shall be a permanent, bound register with numbered pages.

(2) If the journal is maintained in an electronic format, it shall be in a permanent, tamper-evident electronic format complying with the rules of the Office.

(c) An entry in a journal shall be made contemporaneously with the performance of the notarial act and contain the following information:

(1) the date and time of the notarial act;

(2) a description of the record, if any, and type of notarial act;

(3) the full name and address of each individual for whom the notarial act is performed;

(4) if identity of the individual is based on personal knowledge, a statement to that effect;

(5) if identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration of any identification credential; and

(6) the fee, if any, charged by the notary public.

(d) If a notary public's journal is lost or stolen, the notary public promptly shall notify the Office on discovering that the journal is lost or stolen.

(e) On resignation from, or the revocation or suspension of, a notary public's commission, the notary public shall retain the notary public's journal in accordance with subsection (a) of this section and inform the Office where the journal is located.

(f) Instead of retaining a journal as provided in subsection (e) of this section, a current or former notary public may transmit the journal to the Office or a repository approved by the Office.

(g) On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the journal shall transmit it to the Office or a repository approved by the Office.

§ 5272. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL
ACT ON ELECTRONIC RECORD; SELECTION OF
TECHNOLOGY

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

(b) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, the notary public shall notify the Office that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the Office has established standards by rule for approval of technology pursuant to section 5223 of this chapter, the technology shall conform to the standards. If the technology conforms to the standards, the Office shall approve the use of the technology.

§ 5273. AUTHORITY TO REFUSE TO PERFORM NOTARIAL ACT

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

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

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

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

§ 5274. VALIDITY OF NOTARIAL ACTS

(a) Except as otherwise provided in subsection 5273(b) of this chapter, the failure of a notarial officer to perform a duty or meet a requirement specified in this chapter shall not invalidate a notarial act performed by the notarial officer.

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

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

§ 5275. NOTARIAL ACT IN ANOTHER STATE

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

(1) a notary public of that state;

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

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

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

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

§ 5276. NOTARIAL ACT UNDER AUTHORITY OF FEDERALLY
RECOGNIZED INDIAN TRIBE

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

(1) a notary public of the tribe;

(2) a judge, clerk, or deputy clerk of a court of the tribe; or

(3) any other individual authorized by the law of the tribe to perform the notarial act.

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

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

§ 5277. NOTARIAL ACT UNDER FEDERAL AUTHORITY

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

(1) a judge, clerk, or deputy clerk of a court;

(2) an individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;

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

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

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

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

§ 5278. FOREIGN NOTARIAL ACT

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

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

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

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

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

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

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

Sec. 2. REPEAL

The following are repealed:

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

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

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

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

Sec. 3. APPLICABILITY; NOTARY PUBLIC COMMISSION IN EFFECT

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

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

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

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

Sec. 4. SAVINGS CLAUSE

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

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2017.