

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Government Operations to which was referred House
3 Bill No. 206 entitled “An act relating to regulating notaries public” respectfully
4 reports that it has considered the same and recommends that the bill be
5 amended by striking out all after the enacting clause and inserting in lieu
6 thereof the following:

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

8 CHAPTER 101. NOTARIES PUBLIC

9 Subchapter 1. General Provisions

10 § 5201. SHORT TITLE

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

12 § 5202. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

16 § 5203. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
17 NATIONAL COMMERCE ACT

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

1 that act, 15 U.S.C. § 7003(b).

2 § 5204. DEFINITIONS

3 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (14) “Stamping device” means:

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

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

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

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

18 § 5205. EXEMPTIONS

19 (a) Generally.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 Subchapter 2. Administration

12 § 5221. SECRETARY OF STATE’S OFFICE DUTIES

13 The Office shall:

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

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

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

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

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

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

6 § 5222. ASSISTANT JUDGE’S DUTIES

7 The Assistant Judges in a county of jurisdiction shall:

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

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

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

15 § 5223. ADVISOR APPOINTEES

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

20 (b) Each appointee shall have at least three years of experience as a notary
21 public during the period immediately preceding appointment and shall be

1 actively commissioned in Vermont and remain in good standing during
2 incumbency.

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

7 § 5224. RULES

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

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

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

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

16 (4) prescribe the process of granting, renewing, conditioning, denying,
17 suspending, or revoking or otherwise disciplining a notary public commission
18 and assuring the trustworthiness of an individual holding a commission as
19 notary public; and

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

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

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

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

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

13 § 5225. FEES

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

17 Subchapter 3. Commissions

18 § 5241. COMMISSION AS NOTARY PUBLIC; QUALIFICATIONS; NO

19 IMMUNITY OR BENEFIT

20 (a) An individual qualified under subsection (b) of this section may apply
21 to the Office for a commission as a notary public. The applicant shall comply

1 with and provide the information required by rules adopted by the Office and
2 pay the application fee set forth in section 5225 of this chapter.

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

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

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

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

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

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

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

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

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

1 § 5242. GROUNDS TO DENY, REFUSE TO RENEW, REVOKE,
2 SUSPEND, OR CONDITION COMMISSION OF NOTARY
3 PUBLIC

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

9 (1) failure to comply with this chapter;

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

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

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

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

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

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

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

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

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

13 § 5243. RENEWALS; CONTINUING EDUCATION

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

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

1 (c) Biennially, the Office shall provide a renewal notice to each licensee.

2 Upon receipt of a licensee’s completed renewal, fee, and evidence of

3 eligibility, the Office shall issue to him or her a new commission.

4 § 5244. DATABASE OF NOTARIES PUBLIC

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

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

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

10 § 5245. PROHIBITIONS; OFFENSES

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

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

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

19 (d) A person who violates a provision of this section shall be subject to a
20 fine of not more than \$5,000.00 or imprisonment for not more than one year, or
21 both. Prosecution may occur upon the complaint of the Attorney General or a

1 State’s Attorney and shall not act as a bar to civil or administrative proceedings
2 involving the same conduct.

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

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

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

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

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

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

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

17 (2) If a notary public who is not an attorney licensed to practice law in
18 this State in any manner advertises or represents that the notary public offers
19 notarial services, whether orally or in a record, including broadcast media,
20 print media, and the Internet, the notary public shall include the following
21 statement, or an alternate statement authorized or required by Office, in the

1 advertisement or representation, prominently and in each language used in the
2 advertisement or representation: “I am not an attorney licensed to practice law
3 in this State. I am not allowed to draft legal records, give advice on legal
4 matters, including immigration, or charge a fee for those activities.” If the
5 form of advertisement or representation is not broadcast media, print media, or
6 the Internet and does not permit inclusion of the statement required by this
7 subsection because of size, it shall be displayed prominently or provided at the
8 place of performance of the notarial act before the notarial act is performed.

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

12 Subchapter 4. Notarial Acts

13 § 5261. NOTARIAL ACTS IN THIS STATE; AUTHORITY TO PERFORM

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

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

19 § 5262. AUTHORIZED NOTARIAL ACTS

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

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

5 § 5263. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS

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

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

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

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

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

7 § 5264. PERSONAL APPEARANCE REQUIRED

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

11 § 5265. IDENTIFICATION OF INDIVIDUAL

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

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

1 (1) by means of:

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

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

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

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

17 § 5266. SIGNATURE IF INDIVIDUAL UNABLE TO SIGN

18 If an individual is physically unable to sign a record, the individual may
19 direct an individual other than the notarial officer to sign the individual’s name
20 on the record. The notarial officer shall insert “Signature affixed by (name of

1 other individual) at the direction of (name of individual)” or words of similar
2 import.

3 § 5267. CERTIFICATE OF NOTARIAL ACT

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

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

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

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

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

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

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

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

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

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

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

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

3 (4) sets forth the actions of the notarial officer and the actions are
4 sufficient to meet the requirements of the notarial act as provided in sections
5 5262–5264 of this chapter or a law of this State other than this chapter.

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

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

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

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

16 (3) If the Office has established standards by rule pursuant to section
17 5224 of this chapter for attaching, affixing, or logically associating the
18 certificate, the process shall conform to those standards.

1 § 5268. SHORT FORM CERTIFICATES

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

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

6 State of _____ [County] of _____

7 This record was acknowledged before me on _____ by _____

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

9 Signature of notarial officer

10 Stamp [_____]

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

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

13 State of _____ [County] of _____

14 This record was acknowledged before me on _____ by _____

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

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

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

18 whom record was executed).

19 Signature of notarial officer

20 Stamp [_____]

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

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

2 State of _____ [County] of _____

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

4 by _____

5 Date _____

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

7 Signature of notarial officer _____

8 Stamp [_____]

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

10 (4) For witnessing or attesting a signature:

11 State of _____ [County] of _____

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

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

14 Signature of notarial officer _____

15 Stamp [_____]

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

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

18 State of _____ [County] of _____

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

20 of _____.

21 Dated _____

1 Signature of notarial officer

2 Stamp [_____]

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

4 § 5269. OFFICIAL STAMP

5 The official stamp of a notary public shall:

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

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

10 § 5270. STAMPING DEVICE

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

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

17 § 5271. JOURNAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 § 5272. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL

16 ACT ON ELECTRONIC RECORD; SELECTION OF
17 TECHNOLOGY.

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

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

9 § 5273. AUTHORITY TO REFUSE TO PERFORM NOTARIAL ACT

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

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

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

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

17 § 5274. VALIDITY OF NOTARIAL ACTS

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

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

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

7 § 5275. NOTARIAL ACT IN ANOTHER STATE

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

11 (1) a notary public of that state;

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

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

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

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

1 § 5276. NOTARIAL ACT UNDER AUTHORITY OF FEDERALLY

2 RECOGNIZED INDIAN TRIBE

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

7 (1) a notary public of the tribe;

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

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

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

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

18 § 5277. NOTARIAL ACT UNDER FEDERAL AUTHORITY

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

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

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

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

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

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

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

15 § 5278. FOREIGN NOTARIAL ACT

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

18 (b) If a notarial act is performed under authority and in the jurisdiction of a
19 foreign state or constituent unit of the foreign state or is performed under the
20 authority of a multinational or international governmental organization, the act

1 has the same effect under the law of this State as if performed by a notarial
2 officer of this State.

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

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

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

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

19 Sec. 2. REPEAL

20 The following are repealed:

21 (1) 24 V.S.A. chapter 5, subchapter 9 (notaries public);

1 (2) 32 V.S.A. § 1403(b) (county clerk; notaries public without charge
2 or fee);

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

5 (4) 32 V.S.A. § 1759 (notaries public fees).

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

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

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

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

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

16 Sec. 4. SAVINGS CLAUSE

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

19 Sec. 5. EFFECTIVE DATE

20 This act shall take effect on July 1, 2017.

21

1 (Committee vote: _____)

2

3

Representative _____

4

FOR THE COMMITTEE