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H.526

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

CHAPTER 103. NOTARIES PUBLIC

Subchapter 1. General Provisions

§ 5301. SHORT TITLE

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

§ 5302. 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.

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

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

8 § 5304. DEFINITIONS

9 As used in this chapter:

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

15 (2) “Certificate” or “notarial certificate” means the part of, or
16 attachment to, a notarized document that is completed by a notarial officer,
17 bears the required information set forth in section 5367 of this chapter, and
18 states the facts attested to or certified by the notarial officer in a particular
19 notarization.

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

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

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

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

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

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

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

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

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

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

21 (9) “Office” means the Office of Professional Regulation within the

1 Office of the Secretary of State.

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

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

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

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

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

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

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

18 (15) “Stamping device” means:

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

21 (B) an electronic device or process capable of attaching to or

1 logically associating with an electronic record an official stamp.

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

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

8 § 5305. EXEMPTIONS

9 (a) Generally.

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

13 (A) to apply for a commission as set forth in section 5341(a),

14 (b)(1)–(3), (c), (d), and (e) of this chapter; and

15 (B) unless exempted under subsection (c) of this section, to pay the
16 fee set forth in section 5324 of this chapter:

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

20 (B) Persons employed as law enforcement officers certified under
21 20 V.S.A. chapter 151; who are noncertified constables; or who are employed

1 by a Vermont law enforcement agency; the Department of Public Safety, of
2 Fish and Wildlife, of Motor Vehicles, of Liquor Control, or for Children and
3 Families; the Office of the Defender General; the Office of the Attorney
4 General; or a State’s Attorney or Sheriff.

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

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

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

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

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

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

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

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

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

3 (b) Attorneys.

4 (1) Attorneys licensed and in good standing in this State are exempt
5 from:

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

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

10 (2) If a complaint of a violation of this chapter is filed in regard to a
11 Vermont licensed attorney, the Office shall refer the complaint to the
12 Professional Responsibility Board and shall request a report back from the
13 Board regarding the final disposition of the complaint.

14 (c) Fees. The following persons are exempt from the fee set forth in
15 section 5324 of this chapter:

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

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

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

20 (4) State Police officers, municipal police officers, fish and game
21 wardens, sheriffs and deputy sheriffs, motor vehicle inspectors, employees of

1 the Department of Corrections, and employees of the Department for Children
2 and Families.

3 Subchapter 2. Administration

4 § 5321. SECRETARY OF STATE'S OFFICE DUTIES

5 The Office shall:

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

8 (2) administer fees as provided under section 5324 of this chapter;

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

11 (4) receive applications for commissioning, review applications, and
12 renew commissions.

13 § 5322. ADVISOR APPOINTEES

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

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

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

5 § 5323. RULES

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

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

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

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

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

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

20 (b) Rules adopted regarding the performance of notarial acts with respect
21 to electronic records may not require, or accord greater legal status or effect to,

1 the implementation or application of a specific technology or technical
2 specification. In adopting, amending, or repealing rules regarding notarial acts
3 with respect to electronic records, the Office shall consider, as far as is
4 consistent with this chapter:

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

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

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

11 § 5324. FEES

12 For the issuance of a commission as a notary public, the Office shall collect
13 a fee of \$15.00.

14 Subchapter 3. Commissions

15 § 5341. COMMISSION AS NOTARY PUBLIC; QUALIFICATIONS; NO

16 IMMUNITY OR BENEFIT

17 (a) An individual qualified under subsection (b) of this section may apply
18 to the Office for a commission as a notary public. The applicant shall comply
19 with and provide the information required by rules adopted by the Office and
20 pay the application fee set forth in section 5324 of this chapter.

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

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

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

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

5 (4) not be disqualified to receive a commission under section 5342 of
6 this chapter; and

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

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

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

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

17 § 5342. GROUNDS TO DENY, REFUSE TO RENEW, REVOKE,

18 SUSPEND, OR CONDITION COMMISSION OF NOTARY

19 PUBLIC

20 (a) The Office may deny, refuse to renew, revoke, suspend, or impose a
21 condition on a commission as notary public for any act or omission that

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

3 (1) failure to comply with this chapter;

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

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

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

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

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

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

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

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

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

4 § 5343. RENEWALS; CONTINUING EDUCATION

5 (a) Commissions shall be renewed every two years upon payment of the
6 fee set forth in section 5324 of this chapter, provided the person applying for
7 renewal completes continuing education approved by the Office, which shall
8 not be required to exceed more than two hours, during the preceding two-year
9 period.

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

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

15 § 5344. DATABASE OF NOTARIES PUBLIC

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

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

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

21 § 5345. PROHIBITIONS; OFFENSES

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

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

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

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

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

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

20 Subchapter 4. Notarial Acts

21 § 5361. NOTARIAL ACTS IN THIS STATE; AUTHORITY TO PERFORM

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

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

6 § 5362. AUTHORIZED NOTARIAL ACTS

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

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

13 § 5363. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS

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

19 (b) Verifications. A notarial officer who takes a verification of a statement
20 on oath or affirmation shall determine, from personal knowledge or
21 satisfactory evidence of the identity of the individual, that the individual

1 appearing before the officer and making the verification has the identity
2 claimed and that the signature on the statement verified is the signature of the
3 individual.

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

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

11 (e) Protests. A notarial officer who makes or notes a protest of a
12 negotiable instrument shall determine the matters set forth in 9A V.S.A. § 3-
13 505(b), protest; certificate of dishonor.

14 § 5364. PERSONAL APPEARANCE REQUIRED

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

18 § 5365. IDENTIFICATION OF INDIVIDUAL

19 (a) Personal knowledge. A notarial officer has personal knowledge of the
20 identity of an individual appearing before the officer if the individual is
21 personally known to the officer through dealings sufficient to provide

1 reasonable certainty that the individual has the identity claimed.

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

5 (1) by means of:

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

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

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

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

21 § 5366. SIGNATURE IF INDIVIDUAL UNABLE TO SIGN

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

6 § 5367. CERTIFICATE OF NOTARIAL ACT

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

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

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

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

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

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

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

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

21 (c) A certificate of a notarial act is sufficient if it meets the requirements of

1 subsections (a) and (b) of this section and:

2 (1) is in a short form as set forth in section 5368 of this chapter;

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

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

6 (4) sets forth the actions of the notarial officer and the actions are
7 sufficient to meet the requirements of the notarial act as provided in sections
8 5362–5364 of this chapter or a law of this State other than this chapter.

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

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

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

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

19 (3) If the Office has established standards by rule pursuant to section
20 5323 of this chapter for attaching, affixing, or logically associating the
21 certificate, the process shall conform to those standards.

1 § 5368. 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 5367(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 § 5369. 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 § 5370. 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 § 5371. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL

18 ACT ON ELECTRONIC RECORD; SELECTION OF

19 TECHNOLOGY

20 (a) A notary public may select one or more tamper-evident technologies to
21 perform notarial acts with respect to electronic records. A person shall not

1 require a notary public to perform a notarial act with respect to an electronic
2 record with a technology that the notary public has not selected.

3 (b) Before a notary public performs the notary public's initial notarial act
4 with respect to an electronic record, the notary public shall notify the Office
5 that the notary public will be performing notarial acts with respect to
6 electronic records and identify the technology the notary public intends to use.
7 If the Office has established standards by rule for approval of technology
8 pursuant to section 5323 of this chapter, the technology shall conform to the
9 standards. If the technology conforms to the standards, the Office shall
10 approve the use of the technology.

11 § 5372. AUTHORITY TO REFUSE TO PERFORM NOTARIAL ACT

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

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

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

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

19 § 5373. VALIDITY OF NOTARIAL ACTS

20 (a) Except as otherwise provided in subsection 5372(b) of this chapter, the
21 failure of a notarial officer to perform a duty or meet a requirement specified

1 in this chapter shall not invalidate a notarial act performed by the notarial
2 officer.

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

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

9 § 5374. NOTARIAL ACT IN ANOTHER STATE

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

13 (1) a notary public of that state;

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

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

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

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

1 perform the notarial act.

2 § 5375. NOTARIAL ACT UNDER AUTHORITY OF FEDERALLY

3 RECOGNIZED INDIAN TRIBE

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

8 (1) a notary public of the tribe;

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

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

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

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

19 § 5376. NOTARIAL ACT UNDER FEDERAL AUTHORITY

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

1 performed under federal law is performed by:

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

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

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

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

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

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

16 § 5377. EVIDENCE OF AUTHENTICITY OF NOTARIAL ACT

17 PERFORMED IN THIS STATE

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

20 (1) A certificate of authority from the Secretary of State authenticated
21 as necessary.

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

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

7 § 5378. FOREIGN NOTARIAL ACT

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

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

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

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

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

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

10 Sec. 2. 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. 3. 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.

21 (2) A notary public, in performing notarial acts on and after the

1 effective date of this act, shall comply with the provisions of this act.

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

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

7 Sec. 4. SAVINGS CLAUSE

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

10 Sec. 5. EFFECTIVE DATE

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