

Senate proposal of amendment

H. 526

An act relating to regulating notaries public

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

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.

§ 5303. 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).

§ 5304. DEFINITIONS

As used in this chapter:

(1) “Acknowledgment” means a declaration by an individual before a notary public 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) “Certificate” or “notarial certificate” means the part of, or attachment to, a notarized document that is completed by a notary public, bears the required information set forth in section 5367 of this chapter, and states the facts attested to or certified by the notary public in a particular notarization.

(3) “Commission term” means the two-year period commencing on February 1 and continuing through January 31 of the second year following the commencement of the term.

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

(5) “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.

(6) “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, administrator, executor, trustee, 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.

(7)(A) “Notarial act” means an act, whether performed with respect to a tangible or an electronic record, that a notary public 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, attesting a signature, and noting a protest of a negotiable instrument.

(B) “Notarial act” does not include a corporate officer attesting to another corporate officer’s signature in the ordinary course of the corporation’s business.

(C) Nothing in this chapter shall be construed to require the use of a notary public to witness a signature that is allowed by law to be witnessed by an individual who is not a notary public.

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

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

(10) “Office” means the Office of Professional Regulation within the Office of the Secretary of State.

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

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

(13) “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.

(14) “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.

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

(16) “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.

(17) “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.

(18) “Verification on oath or affirmation” means a declaration, made by an individual on oath or affirmation before a notary public, that a statement in a record is true.

§ 5305. EXEMPTIONS

(a) Generally.

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

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

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

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

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

General, or a State's Attorney or Sheriff.

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

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

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

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

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

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

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

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

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

(b) Attorneys.

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

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

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

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

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

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

(2) State's Attorneys and their deputies and Assistant Attorneys

General, public defenders, and their staff;

(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

§ 5321. 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 5324 of this chapter;

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

(4) receive applications for commissioning, review applications, and grant and renew commissions when appropriate under this chapter.

§ 5322. ADVISOR APPOINTEES

(a) The Secretary of State shall appoint two notaries public to serve as advisors in matters relating to notarial acts. One of the advisors shall be an attorney selected from a list of at least three licensed attorneys provided by the Vermont Bar Association. 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.

§ 5323. RULES

(a) The Office, with the advice of the advisor appointees, 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 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.

§ 5324. FEES

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

Subchapter 3. Commissions

§ 5341. 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 5324 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 5342 of this chapter; and

(5) pass a basic 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 shall issue a commission as a notary public to an applicant, which shall be valid through the then current commission term end date.

(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.

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

(a) The Office 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 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.

§ 5343. RENEWALS; CONTINUING EDUCATION

(a) Biennially, the Office shall provide a renewal notice to each commissioned notary public. Upon receipt of a notary public's completed renewal, payment of the fee as set forth in section 5324 of this chapter, and evidence of eligibility, the Office shall issue to him or her a new commission.

(b) A notary public applying for renewal shall complete continuing education approved by the Office, which shall not be required to exceed two hours, during the preceding two-year period.

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

§ 5344. 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.

§ 5345. 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 assist a person in drafting legal records, give legal advice, or otherwise

practice law.

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

Subchapter 4. Notarial Acts

§ 5361. 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.

§ 5362. AUTHORIZED NOTARIAL ACTS

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

(b) A notary public shall not perform a notarial act with respect to a record to which the notary public or the notary public'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.

§ 5363. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS

(a) Acknowledgments. A notary public 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 notary public 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 notary public who 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) Protests. A notary public 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.

§ 5364. PERSONAL APPEARANCE REQUIRED

(a) 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 notary public.

(b) A personal appearance does not include an acknowledgment using video conferencing software that uses the transmission of video images, or any other form of communication in which the notary public and the person requesting the notarial act are not in the same physical location at the same time.

§ 5365. IDENTIFICATION OF INDIVIDUAL

(a) Personal knowledge. A notary public 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 notary public 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 notary public may require an individual to provide additional information or identification credentials necessary to assure the notary public of the identity of the individual.

§ 5366. 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 notary public to sign the individual's name on the record. The notary public shall insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar

import.

§ 5367. 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 notary public 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 notary public; 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 or, in the alternative, the notary shall clearly print or type the notary public's name and commission number on the certificate.

(2) If a notarial act regarding an electronic record is performed by a notary public 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 5368 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 notary public and the actions are sufficient to meet the requirements of the notarial act as provided in sections 5362–5364 of this chapter or a law of this State other than this chapter.

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

(e) A notary public shall not affix the notary public'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 5323 of this chapter for attaching, affixing, or logically associating the certificate, the process shall conform to those standards.

§ 5368. 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 5367(a) and (b) of this chapter:

(1) For an acknowledgment in an individual capacity:

State of Vermont [County] of _____
This record was acknowledged before me on _____ by _____
Date _____ Name(s) of individual(s) _____
Signature of notary public _____
Stamp [_____]
Title of office _____ [My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

State of Vermont [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 notary public _____
Stamp [_____]
Title of office _____ [My commission expires: _____]

(3) For a verification on oath or affirmation:

State of Vermont [County] of _____
Signed and sworn to (or affirmed) before me on _____
by _____
Date _____
Name(s) of individual(s) making statement _____
Signature of notary public _____
Stamp [_____]
Title of office _____ [My commission expires: _____]

(4) For attesting a signature:

State of Vermont [County] of _____
Signed [or attested] before me on _____ by _____
Date _____ Name(s) of individual(s) _____
Signature of notary public _____

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

§ 5369. 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.

§ 5370. 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.

§ 5371. 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 from the tamper-evident technologies approved by the Office by rule. 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 from the list of technologies approved by the Office by rule. If the Office has established standards by rule for approval of technology pursuant to section 5323 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.

§ 5372. AUTHORITY TO REFUSE TO PERFORM NOTARIAL ACT

(a) A notary public may refuse to perform a notarial act if the notary public 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 notary public may refuse to perform a notarial act unless refusal is prohibited by law other than this chapter.

§ 5373. VALIDITY OF NOTARIAL ACTS

(a) Except as otherwise provided in subsection 5372(b) of this chapter, the failure of a notary public to perform a duty or meet a requirement specified in this chapter shall not impair the marketability of title or invalidate a notarial act or a certification evidencing the notarial act.

(b) An acknowledgment that contains a notary commission expiration date that is either inaccurate or expired shall not invalidate the acknowledgment if it can be established that on the date the acknowledgment was taken, the notary public's commission was active.

(c) 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.

(d) Defects in the written evidence of acknowledgment in a document in the public records may be cured by the notary public who performed the original notarial act. The notary public shall, under oath and before a different notary public, execute a writing correcting any defect. Upon recording, the corrective document corrects any deficiency and ratifies the original written evidence of acknowledgment as of the date the acknowledgment was originally taken.

(e) Notwithstanding any provision of law to the contrary, a document that conveys an interest in real property shall be recordable in the land records and, if recorded, shall be sufficient for record notice to third parties, notwithstanding the failure of a notary public to perform any duty or meet any requirement specified in this chapter. Such failure includes the failure to comply in full or in part with the requirements of sections 5367-5369 of this title.

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

§ 5374. 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 notary public 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) If a deed or other conveyance or a power of attorney for the conveyance of land, the acknowledgment or proof of which is taken out of State, is certified agreeably to the laws of the state in which the acknowledgment or proof is taken, it shall be valid as though it were taken before a proper officer in this State.

(c) An acknowledgment for a deed or other conveyance or a power of attorney for the conveyance of land that is taken out of State before a proper officer of this State shall be valid as if taken within this State.

(d) 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.

(e) 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.

§ 5375. 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 notary public 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.

§ 5376. 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 notary public 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.

§ 5377. EVIDENCE OF AUTHENTICITY OF NOTARIAL ACT PERFORMED IN THIS STATE

(a) The authenticity of the official notarial stamp and signature of a notary public may be evidenced by either:

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

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

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

§ 5378. 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 notary public 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. 27 V.S.A. § 341 is amended to read:

§ 341. REQUIREMENTS GENERALLY; RECORDING

(a) Deeds and other conveyances of lands, or of an estate or interest therein, shall be signed by the party granting the same and acknowledged by the grantor before a ~~town clerk,~~ notary public, ~~master,~~ or ~~county clerk~~ and recorded at length in the clerk's office of the town in which such lands lie. Such acknowledgment before a notary public shall be valid without an official seal stamp being affixed to his or her signature.

(b) A deed or other conveyance of land ~~which~~ that includes a reference to a survey prepared or revised after July 1, 1988 may be recorded only if it is accompanied by the survey to which it refers, or cites the volume and page in the land records showing where the survey has previously been recorded.

(c) A lease of real property that has a term of more than one year from the making of the lease need not be recorded at length if a notice or memorandum of lease, which is executed and acknowledged as provided in subsection (a) of this section, is recorded in the land records of the town in which the leased property is situated. The notice of lease shall contain at least the following information:

- (1) the names of the parties to the lease as set forth in the lease;
- (2) a statement of the rights of a party to extend or renew the lease;
- (3) any addresses set forth in the lease as those of the parties;
- (4) the date of the execution of the lease;
- (5) the term of the lease, the date of commencement, and the date of termination;

- (6) a description of the real property as set forth in the lease;
- (7) a statement of the rights of a party to purchase the real property or exercise a right of first refusal with respect thereto;
- (8) a statement of any restrictions on assignment of the lease; and
- (9) the location of an original lease.

Sec. 3. 27 V.S.A. § 342 is amended to read:

§ 342. ACKNOWLEDGMENT AND RECORDING REQUIRED

A deed of bargain and sale, a mortgage or other conveyance of land in fee simple or for term of life, or a lease for more than one year from the making thereof shall not be effectual to hold such lands against any person but the grantor and his or her heirs, unless the deed or other conveyance is acknowledged and recorded as ~~provided in this chapter~~.

Sec. 4. 27 V.S.A. § 463 is amended to read:

§ 463. BY SEPARATE INSTRUMENT

(a) Mortgages may be discharged by an acknowledgment of satisfaction, executed by the mortgagee or his or her attorney, executor, administrator, or assigns, which shall be substantially in the following form:

I hereby certify that the following described mortgage is paid in full and satisfied, viz: _____ mortgagor to _____ mortgagee, dated _____ 20____, and recorded in book _____, page _____, of the land records of the town of _____.

(b) When such satisfaction is acknowledged before a ~~town clerk, notary public, master, or county clerk~~, and recorded, it shall discharge such mortgage and bar actions brought thereon.

Sec. 5. REPEALS

The following are repealed:

- (1) 24 V.S.A. chapter 5, subchapter 9 (notaries public);
- (2) 27 V.S.A. § 379 (conveyance of real estate; execution and acknowledgment; acknowledgment out of state);
- (3) 32 V.S.A. § 1403(b) (county clerk; notaries public without charge or fee);
- (4) 32 V.S.A. § 1436 (fee for certification of appointment as notary public); and
- (5) 32 V.S.A. § 1759 (notaries public fees).

Sec. 6. 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. 7. 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. 8. POTENTIAL ENACTMENT OF UNIFORM UNSWORN DECLARATIONS ACT; REPORT BY AFFECTED ENTITIES

(a) The General Assembly is considering enacting a law similar to the April 2015 draft of the Uniform Unsworn Declarations Act (UUDA) prepared by the National Conference of Commissioners on Uniform State Laws.

(b) In order to understand the UUDA's potential effect on State operations, on or before June 30, 2019, the Secretary of Administration on behalf of the Administration and the State's boards, councils, and commissions; the Attorney General; the Secretary of State; the Executive Director of the Department of State's Attorneys and Sheriffs; the Defender General; the Auditor of Accounts; the State Treasurer; and the Court Administrator shall each submit to the General Assembly a summary regarding the effect of the enactment of the UUDA on each entity and the users of its operations. The summary shall include the following in regard to the entity's operations:

(1) an identification of forms requiring a notarial act and any proceeding or action requiring the use of such forms that are created, used, or required by the entity;

(2) an explanation of whether continued use of a notarial act on a particular form is recommended and if so, why;

(3) any recommendations for amendments to the UUDA;

(4) a draft of any suggested legislation, rules, or forms, including amendments to existing rules and forms, as may be necessary to address issues arising from the enactment of the UUDA;

(5) an identification of the resources, timeline, and expenses related to any necessary rulemaking or form change based on the enactment of the UUDA.

Sec. 9. EFFECTIVE DATES; TRANSITIONAL PROVISIONS

This act shall take effect on July 1, 2019, except that:

(1) this section shall take effect on passage;

(2) the Office of Professional Regulation may adopt rules in accordance with the provisions of Sec. 1 prior to the effective date of that section;

(3) beginning on December 1, 2018, the Office of Professional Regulation shall perform the duties of the assistant judges and county clerks in regard to receiving applications and commissioning notaries public as set forth in 24 V.S.A. chapter 5, subchapter 9 (county officers; notaries public) for the two-year notaries public commission terms that begin on February 1, 2019 in accordance with Sec. 1; and

(4) in Sec. 1, the examination requirement for new notaries public applicants set forth in 26 V.S.A. § 5341(b)(5) and the continuing education requirement for notaries public renewal applicants set forth in 26 V.S.A. § 5343(b) shall take effect on February 1, 2021 and shall apply to those applicants for the notaries public commission terms that begin on that date.