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

8 § 5304. DEFINITIONS

9 As used in this chapter:

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

15 (2) “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.

1 (9) “Office” means the Office of Professional Regulation within the
2 Office of the Secretary of State.

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

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

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

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

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

15 (B) to attach to or logically associate with the record an electronic

16 symbol, sound, or process.

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

19 (15) “Stamping device” means:

20 (A) a physical device capable of affixing to or embossing on a

21 tangible record an official stamp; or

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

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

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

9 § 5305. EXEMPTIONS

10 (a) Generally.

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

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

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

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

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

1 (B) Persons employed as law enforcement officers certified under
2 20 V.S.A. chapter 151; who are noncertified constables; or who are employed
3 by a Vermont law enforcement agency; the Department of Public Safety, of
4 Fish and Wildlife, of Motor Vehicles, of Liquor Control, or for Children and
5 Families; the Office of the Defender General; the Office of the Attorney
6 General; or a State’s Attorney or Sheriff.

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

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

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

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

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

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

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

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

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

6 (b) Attorneys.

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

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

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

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

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

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

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

- 1 (3) justices of the peace and town clerks and their assistants; and
2 (4) State Police officers, municipal police officers, fish and game
3 wardens, sheriffs and deputy sheriffs, motor vehicle inspectors, employees of
4 the Department of Corrections, and employees of the Department for Children
5 and Families.

6 Subchapter 2. Administration

7 § 5321. SECRETARY OF STATE'S OFFICE DUTIES

8 The Office shall:

- 9 (1) provide general information to applicants for commissioning as a
10 notary public;
11 (2) administer fees as provided under section 5324 of this chapter;
12 (3) explain appeal procedures to notaries public and applicants and
13 explain complaint procedures to the public; and
14 (4) receive applications for commissioning, review applications, and
15 renew commissions.

16 § 5322. ADVISOR APPOINTEES

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

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

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

9 § 5323. RULES

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

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

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

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

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

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

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

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

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

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

15 § 5324. FEES

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

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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 for a term of two years.

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

5 § 5342. GROUNDS TO DENY, REFUSE TO RENEW, REVOKE,

6 SUSPEND, OR CONDITION COMMISSION OF NOTARY

7 PUBLIC

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

12 (1) failure to comply with this chapter;

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

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

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

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

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

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

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

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

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

15 § 5343. RENEWALS; CONTINUING EDUCATION

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

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

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

6 § 5344. DATABASE OF NOTARIES PUBLIC

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

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

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

12 § 5345. PROHIBITIONS; OFFENSES

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

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

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

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

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

9 (f) 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 § 5361. 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.

1 § 5362. AUTHORIZED NOTARIAL ACTS

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

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

8 § 5363. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS

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

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

20 (c) Signatures. A notarial officer who witnesses or attests to a signature
21 shall determine, from personal knowledge or satisfactory evidence of the ,

1 identity of the individual, that the individual appearing before the officer and
2 signing the record has the identity claimed.

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

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

9 § 5364. PERSONAL APPEARANCE REQUIRED

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

13 § 5365. IDENTIFICATION OF INDIVIDUAL

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

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

4 (1) by means of:

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

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

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

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

1 § 5366. SIGNATURE IF INDIVIDUAL UNABLE TO SIGN

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

7 § 5367. CERTIFICATE OF NOTARIAL ACT

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

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

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

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

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

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

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

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

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

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

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

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

7 (4) sets forth the actions of the notarial officer and the actions are
8 sufficient to meet the requirements of the notarial act as provided in sections
9 5362–5364 of this chapter or a law of this State other than this chapter.

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

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

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

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

1 (3) If the Office has established standards by rule pursuant to section
2 5323 of this chapter for attaching, affixing, or logically associating the
3 certificate, the process shall conform to those standards.

4 § 5368. SHORT-FORM CERTIFICATES

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

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

9 State of _____ [County] of _____

10 This record was acknowledged before me on _____ by _____

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

12 Signature of notarial officer

13 Stamp [_____]

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

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

16 State of _____ [County] of _____

17 This record was acknowledged before me on _____ by _____

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

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

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

1 whom record was executed).

2 Signature of notarial officer

3 Stamp [_____]

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

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

6 State of _____ [County] of _____

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

8 by _____

9 Date _____

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

11 Signature of notarial officer _____

12 Stamp [_____]

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

14 (4) For witnessing or attesting a signature:

15 State of _____ [County] of _____

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

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

18 Signature of notarial officer

19 Stamp [_____]

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

1 (5) For certifying a copy of a record:
2 State of _____ [County] of _____

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

5 Dated _____

6 Signature of notarial officer

7 Stamp [_____]

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

9 § 5369. OFFICIAL STAMP

10 The official stamp of a notary public shall:

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

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

15 § 5370. STAMPING DEVICE

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

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

1 § 5371. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL
2 ACT ON ELECTRONIC RECORD; SELECTION OF
3 TECHNOLOGY

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

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

16 § 5372. AUTHORITY TO REFUSE TO PERFORM NOTARIAL ACT

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

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

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

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

3 § 5373. VALIDITY OF NOTARIAL ACTS

4 (a) Except as otherwise provided in subsection 5372(b) of this chapter, the
5 failure of a notarial officer to perform a duty or meet a requirement specified in
6 this chapter shall not invalidate a notarial act performed by the notarial officer.

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

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

13 § 5374. NOTARIAL ACT IN ANOTHER STATE

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

17 (1) a notary public of that state;

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

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

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

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

7 § 5375. NOTARIAL ACT UNDER AUTHORITY OF FEDERALLY

8 RECOGNIZED INDIAN TRIBE

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

13 (1) a notary public of the tribe;

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

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

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

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

4 § 5376. NOTARIAL ACT UNDER FEDERAL AUTHORITY

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

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

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

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

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

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

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

1 § 5377. EVIDENCE OF AUTHENTICITY OF NOTARIAL ACT
2 PERFORMED IN THIS STATE

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

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

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

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

13 § 5378. FOREIGN NOTARIAL ACT

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

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

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

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

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

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

17 Sec. 2. REPEAL

18 The following are repealed:

19 (1) 24 V.S.A. chapter 5, subchapter 9 (notaries public);

20 (2) 32 V.S.A. § 1403(b) (county clerk; notaries public without charge
21 or fee);

1 (3) 32 V.S.A. § 1436 (fee for certification of appointment as notary
2 public); and

3 (4) 32 V.S.A. § 1759 (notaries public fees).

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

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

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

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

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

14 Sec. 4. SAVINGS CLAUSE

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

17 Sec. 5. EFFECTIVE DATE

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