

1 H.512

2 Introduced by Representatives Kimbell of Woodstock and Marcotte of

3 Coventry

4 Referred to Committee on

5 Date:

6 Subject: Land records; notarial acts; property

7 Statement of purpose of bill as introduced: This bill proposes to establish the
8 Lands Record Management Office in the Office of the Secretary of State and
9 to enact the Revised Uniform Law on Notarial Acts and the Uniform Real
10 Property Electronic Recording Act.

11 An act relating to modernizing land records and notarial acts law

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

13 ~~Sec. 1. 3 V.S.A. chapter 5, subchapter 5 is added to read:~~

14 ~~Subchapter 5. Land Records Management Office~~

15 ~~§ 141a. STATEMENT OF PURPOSE~~

16 ~~(a) Pursuant to 1 V.S.A. § 317a, public records in general and archival~~
17 ~~records in particular should be systematically managed to provide ready access~~
18 ~~to essential information, to promote the efficient and economical operation of~~

1 ~~government, and to preserve their legal, administrative, and informational~~
2 ~~value.~~

3 (b) Municipal land records are of vital importance to the economy and
4 history of Vermont. Vermont's municipal clerks are dedicated to
5 implementing sound management practices and providing the best possible
6 assistance to those who depend on their services.

7 (c) In order to modernize the existing system and to create consistency in
8 recording and indexing practices, this subchapter establishes a municipal Land
9 Records Management Office to oversee the management of Vermont's
10 municipal land records. The Office shall be responsible for overseeing the
11 implementation and utilization of modern methods, techniques, equipment,
12 documentation, and training that will improve the quality of public service
13 with respect to land records and help to achieve a high degree of
14 standardization throughout the State. The Office shall provide technical
15 assistance to municipal officials in their efforts to further enhance their
16 abilities to provide the best possible service to their public.

17 § 141b. DEFINITIONS

18 As used in this chapter:

19 (1) "Clerk" means a municipal or county clerk, whether elected or
20 appointed.

1 (2) "Minimum Indexing Standards" means minimum indexing standards
2 established by statute or rule.

3 (3) "Municipal land record" means:

4 (A) a document recorded by a municipal official pursuant to
5 24 V.S.A. § 1134;

6 (B) a survey plat recorded pursuant to section 27 V.S.A. § 1401; or

7 (C) any instrument filed with or produced by the municipal zoning
8 office.

9 (4) "Municipal land records office" means the place or places where
10 municipal land records are recorded, filed, or stored and includes the
11 municipal clerk's office and the municipal zoning office.

12 (5) "Municipal official" means a clerk, a municipal zoning
13 administrator, or any person or body in charge of maintaining municipal land
14 records.

15 (6) "Municipality" means a Vermont city, town, unorganized town, or
16 gore.

17 (7) "Office of Land Records Management" means the office created to
18 oversee land records management pursuant to this subchapter.

19 § 141c. LAND RECORDS MANAGEMENT OFFICE AND PROGRAM

20 (a) The Office of Land Records Management is created within the Office
21 of the Secretary of State to aid municipal governments in utilizing modern

1 ~~methods, techniques, equipment, and documentation that will improve the~~

2 quality of public services with respect to land records and achieve a high

3 degree of standardization throughout the State. The Office shall create and

4 administer a land records management program for the purposes of:

5 (1) consulting with and advising municipal officials, tax officials, and

6 planning and zoning officials about sound management practices and

7 establishing greater uniformity in the municipal land records system;

8 (2) overseeing allocation of funding to manage the municipal land

9 records; and

10 (3) creating and enforcing rules and regulations.

11 (b) The management program shall consist of the activities provided for in

12 this section and other related activities essential to the effective conduct of the

13 management program.

14 (c) The Office, in accordance with Vermont statutes, shall provide advice

15 and technical assistance to municipal governments in establishing,

16 implementing, and maintaining minimum standards regarding all aspects of

17 municipal records management, including:

18 (1) uniform recording and indexing practices and procedures, and

19 (2) ensuring that low-cost, secure repositories and systems for public

20 records, regardless of format, are available at an enterprise or statewide level

21 and managed and operated in a manner that supports compliance with

1 ~~generally accepted record keeping principles, industry standards, best~~
2 practices, the Public Records Act, and this chapter.

3 (d) The Office shall undertake research and provide advice and technical
4 assistance and services on all aspects of land records management, including:

5 (1) centralized recording systems;

6 (2) imaging, filming, filing, and recording techniques and equipment;

7 (3) computerized land records systems;

8 (4) storage and retrieval of land records;

9 (5) access to records by the general public;

10 (6) use of technology, including use, implementation, and purchase of
11 hardware and software;

12 (7) fiscal management, including applications for grants and other
13 funding from the Office; and

14 (8) education and training.

15 (e) On or before July 1, 2023, the Office shall adopt rules specifying the
16 minimum standards established pursuant to this section, procedures for
17 complying with the minimum standards in land records management, and
18 enforcement mechanisms to ensure compliance. A copy of the rules and
19 standards adopted shall be posted in the clerk's office in each municipal
20 recording office and made available on the Office's website.

1 ~~(f)(1) The Land Records Advisory Committee is created within the Office~~
2 to provide assistance in administering the land records management program.
3 The Committee shall consist of not more than 12 members appointed by the
4 Office.

5 (2)(A) Each of the following organizations shall submit a slate of
6 nominations to the Office, and the Office shall make an appointment to the
7 Committee from each slate:

8 (i) the Vermont Assessors and Listers Association;

9 (ii) the Vermont Society of Professional Engineers;

10 (iii) the Vermont Society of Land Surveyors;

11 (iv) the Vermont Center for Geographic Information;

12 (v) the Vermont Municipal Clerks and Treasurers Association;

13 (vi) the Real Property Section of the Vermont Bar Association;

14 (vii) the Vermont Association of Planning and Development

15 Agencies;

16 (viii) the Vermont State Archivist identified in 3 V.S.A. § 117; and

17 (ix) the Vermont Paralegal Organization.

18 (B) The Office shall appoint up to three public members from

19 applications solicited and received by the Office.

1 ~~(2) Members of the committee shall be appointed for four year terms~~
2 except that the initial terms of the members listed in subdivisions (2)(A)(i)–
3 (iii) of this subsection and of two of the public members shall be two years.

4 (4) The Office shall appoint a chair of the Committee, and the
5 Committee shall meet at the call of the Chair. The initial meeting shall occur
6 not later than 60 days after the effective date of this act.

7 (5)(A) When making public appointments, the Office shall make
8 reasonable efforts to achieve geographical and population balance on the
9 Committee by seeking to appoint one-third of the members from the most
10 populous counties in the State, one-third from the least populous counties, and
11 one-third from the remaining moderately populous counties.

12 (B) An organization making nominations pursuant to subdivision
13 (2)(A) of this subsection (f) shall nominate one nominee each from the more
14 populous, moderately populous, and less populous counties of the State.

15 (6) Members of the Panel who are not State employees or whose
16 participation is not supported through their employment or association shall
17 receive per diem compensation and reimbursement of expenses pursuant to
18 32 V.S.A. § 1010, to be provided by the Office of the Secretary of State.

19 § 141d. DIRECTOR

20 (a) The Office shall have a director who shall be be qualified by education
21 and professional experience to perform the duties of the position. The Director

1 ~~of Land Records Management shall be a classified position within the Office~~
2 ~~of the Secretary of State.~~

3 ~~(b) The Director shall have the following duties:~~

4 ~~(1) to issue policies, standards, guidelines, and procedures necessary to~~
5 ~~carry out the provisions of this chapter;~~

6 ~~(2) to administer and maintain a program for the efficient and~~
7 ~~systematic control of municipal land records;~~

8 ~~(3) to approve record schedules governing the life cycle management,~~
9 ~~retention, and disposition of municipal land records;~~

10 ~~(4) to receive and disburse grants, gifts, aid, or assistance, of any kind,~~
11 ~~from any source, public or private, for the purpose of administering the~~
12 ~~program; and~~

13 ~~(5) to be a member of the Vermont Historical Records Advisory Board~~
14 ~~pursuant to 36 C.F.R. Part 1206 for the purposes of improving public access~~
15 ~~to, and engagement with, Vermont historical records and encouraging and~~
16 ~~facilitating collaborative efforts among Vermont historical records repositories.~~

17 § 141e. MUNICIPAL LAND RECORDS SPECIAL FUND

18 ~~(a) There is hereby created the Municipal Land Records Special Fund to~~
19 ~~support the operation and management of the Office. The Fund shall be~~
20 ~~administered as a special fund pursuant to 32 V.S.A. chapter 7, subchapter 3~~
21 ~~and shall consist of receipts from other government agencies, grant money,~~

1 ~~fees, dues, charges, civil penalties, and all other revenue of whatever source~~
2 collected by the Office pursuant to rules and pursuant to the provisions of this
3 subchapter.

4 (b) Monies from the Fund shall only be appropriated for the purposes of
5 implementation, administration, and enforcement of this chapter.

6 § 141f. FEES AND REVENUE

7 (a) The Office shall have the authority to charge and collect fees as
8 provided under this subchapter and by rule.

9 (b) The Office shall deposit all revenues it receives into the Municipal
10 Land Records Special Fund.

11 § 141g. VERMONT STATE ARCHIVES AND RECORDS

12 ADMINISTRATION

13 The Vermont State Archives and Records Administration established by
14 section 117 of this chapter shall cooperate and work collaboratively with the
15 Office.

16 § 141h. GRANTS

17 (a) Eligible projects. Grants are available for projects that constitute one or
18 more phases of a plan to standardize municipal land records management
19 systems, including mandates by the Office relating to digitization and capital
20 improvements. Any such plan must describe the work to be undertaken in
21 relation to the municipality's schedule and shall be shown to be a part of a

1 ~~larger undertaking for achieving ultimate long-term improvement in the land~~
2 records maintained by the municipal clerk or other municipal offices.

3 (b) Description of projects. Projects may include any matter related to
4 improvement of the municipality's land records management.

5 (c) Eligible applicants. The clerk, or the municipality's governing body,
6 shall be eligible to apply for grants to assist in the financing of projects.

7 (d) Qualifications. No applicant shall be eligible for the award of a grant
8 unless it demonstrates to the satisfaction of the Office that the applicant is
9 eligible and that the applicant has complied or will comply with all applicable
10 State and local laws, rules, and ordinances.

11 (e) Grant limitations. Grants shall be made in an amount that the Office
12 deems necessary or appropriate under the circumstances of the grant
13 application.

14 (f) Supplemental grants. Supplemental grants may be made for those
15 approved projects for which a grant has already been awarded if the Office
16 determines that the supplemental grant is required for continued improvement
17 in the land records management program.

18 (g) Eligible project costs. Eligible costs are costs approved by the Office
19 and may include the cost of purchase or acquisition of capital equipment or
20 interests therein. Eligible costs are limited to the actual costs of the work on
21 works described in the project grant application but may, upon approval,

1 ~~include recurring annual expenditures for administration, repairs, operation,~~
2 ~~and maintenance of any land records management systems.~~

3 (h) Applications. Applications for project grants for improvement or
4 expansion of land records management systems shall be submitted to the
5 Office on a Land Records Management Grant Application form approved by
6 the Office. The Office may require supporting documentation with
7 applications. Any application that does not contain information sufficient to
8 permit the Office to determine either the eligibility of the applicant or the
9 assignment of a priority shall not be deemed as received until such
10 information is furnished by the applicant to the Office. An applicant shall
11 furnish information supplemental to the information contained in its
12 application and supporting documentation upon request by the Office. An
13 applicant may amend a pending application to include additional data or
14 information in support of its original application at any time prior to the date
15 on which the final priority to be assigned to the application is determined.

16 (i) Eligible applications.

17 (1) Each application and supporting documents shall be reviewed by
18 the Office to determine if it contains all required information and meets
19 grant eligibility requirements.

1 ~~(2) Each applicant will be notified by the Office within 30 days after~~
2 ~~the actual date of receipt of the application of its eligibility for consideration~~
3 ~~for a project grant award.~~

4 ~~(3) Eligible applications will be processed for priority determination~~
5 ~~for a grant award in accordance with rules established by the Office.~~

6 § 141i. CRITERIA FOR EVALUATION OF ELIGIBLE APPLICATIONS

7 (a) Each eligible application shall be assigned a priority for grant funds
8 through use of the point system outlined in this section.

9 (b) In determining the priority to be assigned to each eligible application,
10 the Office shall consider the following:

11 (1) Primary consideration shall be given to those municipalities with
12 long-range plans for the modernization of their land records.

13 (2) Consideration shall be given to those municipalities that
14 demonstrate a willingness to cooperate with all municipal offices involved
15 with land records.

16 (3) Consideration shall be given to those municipalities that have
17 allocated funds for the modernization of land records.

18 § 141j. REQUESTS FOR PAYMENT OF GRANTS

19 Requests for payment of any grant funds awarded shall be made by the
20 grant recipient to the Office. Following review, inspection, or audit, the
21 Office shall determine whether the grant payment should be made.

1 § 141k. INSPECTION OF PROJECT

2 (c) A project for which a grant has been made may be inspected by the
3 Office to determine the degree of completion of the project and compliance
4 with applicable laws and rules.

5 (b) Inspections shall be made by Office personnel or by other persons
6 who are approved by the Office to make inspections.

7 § 141l. AUDIT OF PROJECTS

8 An audit shall be required for each project that has received a grant from
9 the Office.

10 § 141m. MINIMUM INDEXING STANDARDS

11 The Office shall enforce the minimum indexing standards set forth in
12 24 V.S.A. § 1154 and applicable rules.

13 § 141n. TECHNICAL ASSISTANCE

14 The Office shall make every reasonable effort, subject to available
15 resources, to assist any clerk in making the transition to the minimum
16 indexing standards set forth in 24 V.S.A. § 1154. Requests for assistance
17 from municipal clerks shall be submitted in writing to the Office and shall
18 describe in detail the problems encountered and types of assistance needed in
19 making the transition.

1 § 141c. COMPLIANCE REVIEWS

2 To determine and ensure that full statewide compliance with the minimum
3 indexing standards set forth in 24 V.S.A. § 1154 has been accomplished and
4 to assess additional needs of assistance, the Office shall periodically make on-
5 site visits to municipal clerks' operations and advise municipal clerks of their
6 compliance or noncompliance. The Office shall make on-site visits as it
7 deems appropriate and pursuant to rule.

8 § 141p. REQUEST FOR STUDY

9 At the request of a clerk or the governing body of a municipality and
10 subject to available resources, the Office shall conduct a management study of
11 the municipal office with the assistance of the Department of Human
12 Resources. After conducting the study, the Office shall make nonbinding
13 recommendations to the municipality.

14 Sec. 2. 24 V.S.A. § 1154 is amended to read:

15 § 1154. RECORDS; COPIES

16 * * *

17 (e) The town clerk, and third-party vendors who provide access to digitized
18 records, shall comply with the most current version of the minimum indexing
19 standards published by the Property Records Industry Association.

20 (f) Town clerks who maintain digitized records shall make the records
21 available on the Internet.

1 ~~Sec. 3-26 V.S.A., chapter 103 is amended to read:~~

2 ~~CHAPTER 103. NOTARIES PUBLIC REVISED UNIFORM LAW ON~~
3 ~~NOTARIAL ACTS~~

4 ~~Subchapter 1. General Provisions~~

5 ~~§ 5301. SHORT TITLE~~

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

7 ~~§ 5302. UNIFORMITY OF APPLICATION AND CONSTRUCTION~~

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

11 ~~§ 5303. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND~~
12 ~~NATIONAL COMMERCE ACT~~

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

18 ~~§ 5304. DEFINITIONS~~

19 ~~As used in this chapter:~~

20 ~~(1) "Acknowledgment" means a declaration by an individual before a~~
21 ~~notary public that the individual has signed a record for the purpose stated in~~

1 ~~the record and, if the record is signed in a representative capacity, that the~~
2 individual signed the record with proper authority and signed it as the act of
3 the individual or entity identified in the record.

4 (2) “Certificate” or “notarial certificate” means the part of, or
5 attachment to, a notarized document that is completed by a notary public,
6 bears the required information set forth in section 5367 of this chapter, and
7 states the facts attested to or certified by the notary public in a particular
8 notarization.

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

12 (4) “Communication technology” means an electronic device or process
13 that:

14 (A) allows a notary public and a remotely located individual to
15 communicate with each other simultaneously by sight and sound; and

16 (B) when necessary and consistent with other applicable law,
17 facilitates communication with a remotely located individual who has a vision,
18 hearing, or speech impairment.

19 (5) “Credential analysis” means a process or service through which a
20 third person affirms the validity of a current government-issued identification

1 ~~credential by review of public and proprietary data sources that may be used as~~
2 a form of identity proofing.

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

5 (5)(7) “Electronic signature” means an electronic symbol, sound, or
6 process attached to or logically associated with a record and executed or
7 adopted by an individual with the intent to sign the record.

8 (8) “Foreign state” means a jurisdiction other than the United States, a
9 state, or a federally recognized Indian tribe.

10 (9) “Identity proofing” means a process or service by which a third
11 person provides a notary public with a means to verify the identity of a
12 remotely located individual by a review of personal information from public or
13 private data sources that may include credential analysis, knowledge-based
14 authentication, analysis of biometric data such as, but not limited to, facial
15 recognition, voiceprint analysis, or fingerprint analysis, or other means
16 permitted by this section or the Office.

17 (6)(10) “In a representative capacity” means acting as:

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

20 (B) a public officer, personal representative, guardian, administrator,
21 ~~executor, trustee, or other representative, in the capacity stated in a record,~~

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

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

3 ~~(11) “Knowledge-based authentication” means a form of identity~~
4 ~~proofing based on a set of questions that pertain to an individual and are~~
5 ~~formulated from public or proprietary data sources.~~

6 ~~(7)(12)(A) “Notarial act” means an act, whether performed with respect~~
7 ~~to a tangible or an electronic record, that a notary public may perform under~~
8 ~~the law of this State. The term includes taking an acknowledgment,~~
9 ~~administering an oath or affirmation, taking a verification on oath or~~
10 ~~affirmation, attesting a signature, and noting a protest of a negotiable~~
11 ~~instrument.~~

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

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

18 ~~(8)(13) “Notarial officer” means an individual authorized to perform a~~
19 ~~notarial act under authority and within the jurisdiction of another state, under~~
20 ~~authority and within the jurisdiction of a federally recognized Indian tribe,~~
21 ~~under authority of federal law, under authority and within the jurisdiction of a~~

1 ~~foreign state or constituent unit of the foreign state, or under authority of a~~
2 multinational or international governmental organization.

3 ~~(9)(14)~~ “Notary public” means an individual commissioned to perform a
4 notarial act by the Office.

5 ~~(10)(15)~~ “Office” means the Office of Professional Regulation within
6 the Office of the Secretary of State.

7 ~~(11)(16)~~ “Official stamp” means a physical image affixed to or
8 embossed on a tangible record or an electronic process, seal, or image or
9 electronic information attached to or logically associated with an electronic
10 record.

11 ~~(17)~~ “Outside the United States” means a location outside the
12 geographic boundaries of the United States, Puerto Rico, the U.S. Virgin
13 Islands, and any territory, insular possession, or other location subject to the
14 jurisdiction of the United States.

15 ~~(12)(18)~~ “Person” means an individual, corporation, business trust,
16 statutory trust, partnership, limited liability company, association, joint
17 venture, public corporation, government or governmental subdivision, agency,
18 or instrumentality, or any other legal or commercial entity.

19 ~~(13)(19)~~ “Record” means information that is inscribed on a tangible
20 medium or that is stored in an electronic or other medium and is retrievable in
21 perceivable form.

1 ~~(20) “Remotely located individual” means an individual who is not in~~
2 the physical presence of the notary public who performs a notarial act under
3 section 5379 of this chapter.

4 ~~(14)(21) “Sign” means, with present intent to authenticate or adopt a~~
5 record:

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

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

9 ~~(15)(22) “Signature” means a tangible symbol or an electronic signature~~
10 that evidences the signing of a record.

11 ~~(16)(23) “Stamping device” means:~~

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

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

16 ~~(17)(24) “State” means a state of the United States, the District of~~
17 Columbia, Puerto Rico, the U.S. Virgin Islands, or any territory or insular
18 possession subject to the jurisdiction of the United States.

19 ~~(25) “Tamper evident” means the use of a set of applications, programs,~~
20 hardware, software, or other technologies that will display evidence of any
21 changes to an electronic record.

1 ~~(18)(26) “Verification on oath or affirmation” means a declaration,~~
2 made by an individual on oath or affirmation before a notary public, that a
3 statement in a record is true.

4 § 5305. EXEMPTIONS

5 (a) Judiciary and law enforcement-related employees.

6 (1) Employee exemptions.

7 (A) Judiciary-related.

8 (i) The persons set forth in subdivision (2)(A) of this subsection
9 (a), when acting within the scope of their official duties, are exempt from all of
10 the requirements of this chapter, including the requirement to pay the fee set
11 forth in section 5324 of this chapter, except for the requirement to apply for a
12 commission as set forth in subsections 5341(a), (c), (d), and (e) and
13 subdivisions (b)(1)–(3) of this chapter.

14 (ii) A commission issued to a person under this subdivision (A)
15 shall not be considered a license.

16 (B) Law enforcement-related.

17 (i) The persons set forth in subdivision (2)(B) of this subsection
18 (a), when acting within the scope of their official duties, shall be
19 commissioned as notaries public authorized to perform a notarial act as a
20 ~~matter of law and are exempt from all of the requirements of this chapter,~~

1 including the requirement to pay the fee set forth in section 5324 of this
2 chapter.

3 (ii) A notarial act that identifies the notary public as a person who
4 is exempt under this subdivision (B) shall establish as a matter of law that the
5 person is commissioned as a notary public for the purpose of acting within the
6 scope of official duties under this subsection (a).

7 (2) Employees, defined.

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

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

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

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

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

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

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

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

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

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

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

18 (b) Attorneys.

19 (1) Attorneys licensed and in good standing in this State, except
20 attorneys conducting remote notarizations pursuant to section 5379 of this
21 chapter, are exempt from.

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

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

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

9 (c) Town clerks, assistants, and justices of the peace.

10 (1)(A) A town clerk and ~~his or her~~ the town clerk's assistants may
11 perform notarial acts as notaries public throughout the town clerk's county,
12 provided that they shall comply with all of the requirements of this chapter,
13 except as provided in subdivision (2) of this subsection (c).

14 (B) Subject to the provisions of subdivision (A) of this subdivision
15 (1), performing notarial acts as a notary public shall be considered within the
16 scope of the official duties of a town clerk and ~~his or her~~ the town clerk's
17 assistants.

18 (2) Justices of the peace and town clerks and their assistants are exempt
19 from the fee set forth in section 5324 of this chapter.

20 (d) Unauthorized practice. Nothing in this section is intended to prohibit
21 prosecution of a person under 5 V.S.A. § 127 (unauthorized practice).

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.

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 the commission of or otherwise disciplining a notary
16 public and assuring the trustworthiness of an individual holding a commission
17 as notary public;

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

20 (6) prescribe standards for remote online notarization, including
21 standards for credential analysis, the process through which a third person

1 ~~affirms the identity of an individual, the methods for communicating through a~~
2 secure communication link, the means by which the remote notarization is
3 certified, and the form of notice to be appended disclosing the fact that the
4 notarization was completed remotely on any document acknowledged through
5 remote online notarization.

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

13 (1) the most recent standards regarding electronic records and remote
14 online notarization promulgated by national bodies, such as the National
15 Association of Secretaries of State and the Mortgage Industry Standards and
16 Maintenance Organization;

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

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

1 ~~(c) Neither electronic notarization nor remote online notarization shall be~~
2 allowed until the Secretary of State has adopted rules and prescribed standards
3 in these areas.

4 § 5324. FEES

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

7 Subchapter 3. Commissions

8 § 5341. COMMISSION AS NOTARY PUBLIC; QUALIFICATIONS; NO
9 IMMUNITY OR BENEFIT

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

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

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

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

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

19 (4) not be disqualified to receive a commission under section 5342 of
20 this chapter, and

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

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

5 (d) Upon compliance with this section, the Office shall issue a commission
6 as a notary public to an applicant, which shall be valid through the then current
7 commission term end date.

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

12 § 5342. GROUNDS TO DENY, REFUSE TO RENEW, REVOKE,
13 SUSPEND, OR CONDITION COMMISSION OF NOTARY
14 PUBLIC

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

- 19 (1) failure to comply with this chapter;
20 (2) a fraudulent, dishonest, or deceitful misstatement or omission in the
21 application for a commission as a notary public submitted to the Office,

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

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

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

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

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

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

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

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

1 § 5343. RENEWALS; CONTINUING EDUCATION

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

6 (b) A notary public applying for renewal shall complete continuing
7 education approved by the Office, which shall not be required to exceed two
8 hours, during the preceding two-year period. A notary public electing to
9 conduct remote notarizations pursuant to section 5379 of this title shall
10 compute a continuing education course approved by the Office that addresses
11 the duties, obligations, and technology requirements for conducting a remote
12 notarization.

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

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.

1 ~~§ 5245. PROHIBITIONS; OFFENSES~~

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

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

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

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

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

18 (f) Except as otherwise allowed by law, a notary public shall not withhold
19 access to or possession of an original record provided by a person who seeks
20 ~~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, as defined in subdivision 5304(7)(A) of this chapter, 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.

(c) A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

§ 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

1 ~~and making the acknowledgment has the identity claimed and that the~~
2 signature on the record is the signature of the individual.

3 (b) Verifications. A notary public who takes a verification of a statement
4 on oath or affirmation shall determine, from personal knowledge or
5 satisfactory evidence of the identity of the individual, that the individual
6 appearing before the officer and making the verification has the identity
7 claimed and that the signature on the statement verified is the signature of the
8 individual.

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

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

16 (e) Protests. A notary public who makes or notes a protest of a negotiable
17 instrument shall determine the matters set forth in 9A V.S.A. § 3-505(b),
18 ~~protest, certificate of dishonor.~~

1 ~~§ 5364. PERSONAL APPEARANCE REQUIRED~~

2 (a) If a notarial act relates to a statement made in or a signature executed
3 on a record, the individual making the statement or executing the signature
4 shall appear personally before the notary public.

5 (b) The requirement for a personal appearance is satisfied if:

6 (1) the notary public and the person executing the signature are in the
7 same physical place; or

8 (2) the notary public and the person are ~~communicating through a~~
9 ~~secure communication link using protocols and standards prescribed in rules~~
10 ~~adopted by the Secretary of State pursuant to the rulemaking authority set forth~~
11 ~~in this chapter interacting by means of communication technology in~~
12 ~~compliance with section 5379 of this chapter.~~

13 § 5365. IDENTIFICATION OF INDIVIDUAL

14 (a) Personal knowledge. A notary public 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.

18 (b) Satisfactory evidence. A notary public has satisfactory evidence of the
19 identity of an individual appearing before the officer if the officer can identify
20 the individual:

21 ~~(1) by means of.~~

1 ~~(A) a passport, driver's license, or government issued nondriver~~
2 ~~identification card, which is current or expired not more than three years~~
3 ~~before performance of the notarial act and unexpired; or~~

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

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

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

16 § 5366. SIGNATURE IF INDIVIDUAL UNABLE TO SIGN

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

1 ~~§ 5367. CERTIFICATE OF NOTARIAL ACT.~~

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

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

5 (2) be signed and dated by the notary public and be signed in the same
6 manner as on file with the Office;

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

8 (4) indicate whether the notarial act was performed remotely pursuant to
9 section 5379 of this title;

10 (5) contain the title of office of the notary public; and

11 (5)(6) indicate the date of expiration of the officer's commission.

12 (b)(1) If a notarial act regarding a tangible record is performed by a notary
13 public, an official stamp shall be affixed to or embossed on the certificate or,
14 in the alternative, the notary shall clearly print or type the notary public's
15 name and commission number on the certificate.

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

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

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

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

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

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

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

11 (e) A notary public shall not affix the notary public’s signature to, or
12 logically associate it with, a certificate until the notarial act has been
13 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 Vermont [County] of _____

7 This record was acknowledged before me by means of physical presence or
8 communication technology on _____ by _____

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

10 Signature of notary public _____

11 Stamp _____ [_____]

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

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

14 State of Vermont [County] of _____

15 This record was acknowledged before me by means of physical presence or
16 communication technology on _____ by _____ Date

17 _____ Name(s) of individual(s) _____ as _____ (type
18 of authority, such as officer or trustee) of _____ (name of party
19 on behalf of whom record was executed).

20 Signature of notary public _____

21 Stamp [_____]

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

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

3 State of Vermont [County] of _____

4 Signed and sworn to (or affirmed) before me by means of physical presence

5 or communication technology on _____ by _____

6 Date _____

7 Name(s) of individuals making statement _____

8 Signature of notary public _____

9 Stamp [_____]

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

11 (4) For attesting a signature:

12 State of Vermont [County] of _____

13 Signed [or attested] before me by means of physical presence or

14 communication technology on _____ by _____ Date

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

16 Signature of notary public _____

17 Stamp [_____]

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

19 (5) For attestation of a copy of a document:

20 State of Vermont [County] of _____

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

2 of _____

3 Dated _____

4 Signature of notary public _____

5 Stamp [_____]

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

7 § 5369. OFFICIAL STAMP

8 The official stamp of a notary public shall:

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

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

13 § 5370. STAMPING DEVICE

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

17 (b) If a notary public's stamping device is lost or stolen, the notary public
18 or the notary public's personal representative or guardian shall notify promptly
19 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 from the tamper-
6 evident technologies that meet the requirements of section 5379 of this title or
7 that are approved by the Office by rule. A person shall not require a notary
8 public to perform a notarial act with respect to an electronic record with a
9 technology that the notary public has not selected.

10 (b) Before a notary public performs the notary public's initial notarial act
11 with respect to an electronic record, the notary public shall notify the Office
12 that the notary public will be performing notarial acts with respect to
13 electronic records and identify the technology the notary public intends to use
14 from the list of technologies approved by the Office by rule. If the Office has
15 established standards by rule for approval of technology pursuant to section
16 5323 of this chapter, the technology shall conform to the standards. If the
17 technology conforms to the standards, the Office shall approve the use of the
18 technology.

19 (c) A town clerk's office may accept for recording a tangible copy of an
20 electronic record containing a notarial certificate as satisfying any requirement
21 that a record accepted for recording be an original if the notarial officer

1 ~~executing the notarial certificate certifies that the tangible copy is an accurate~~
2 ~~copy of the electronic record.~~

3 § 5372. AUTHORITY TO REFUSE TO PERFORM NOTARIAL ACT

4 (a) A notary public may refuse to perform a notarial act if the notary public
5 is not satisfied that:

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

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

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

11 § 5373. VALIDITY OF NOTARIAL ACTS

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

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

20 (c) The validity of a notarial act under this chapter shall not prevent an

21 ~~aggrieved person from seeking to invalidate the record or transaction that is~~

1 ~~the subject of the notarial act or from seeking other remedies based on law of~~
2 this State other than this chapter or law of the United States.

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

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

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

19

~~§ 5379. NOTARIAL ACT PERFORMED FOR A REMOTELY LOCATED~~

INDIVIDUAL

(a) A remotely located individual may comply with section 5364 of this title by using communication technology to appear before a notary public.

(b) A notary public physically located in this State may perform a notarial act using communication technology for a remotely located individual if:

(1) the notary public:

(A) has personal knowledge under subsection 5365(a) of this title of the identity of the remotely located individual;

(B) has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness who is:

(i) personally known to both the notary public and the remotely located individual; or

(ii) identified by the notary public using at least two different types of identity proofing; or

(C) has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

(2) the notary public is able to execute the notarial act in a single, real-time session,

1 ~~(3) the notary public is able reasonably to confirm that a record before~~
2 the notary public is the same record in which the remotely located individual
3 made a statement or on which the individual executed a signature;

4 (4) the notary public, or a person acting on behalf of the notary public,
5 creates an audiovisual recording of the performance of the notarial act; and

6 (5) for a remotely located individual located outside the United States:

7 (A) the record:

8 (i) is to be filed with or relates to a matter before a public official
9 or court, governmental entity, or other entity subject to the jurisdiction of the
10 United States; or

11 (ii) involves property located in the territorial jurisdiction of the
12 United States or involves a transaction substantially connected with the United
13 States; and

14 (B) the act of making the statement or signing the record is not
15 prohibited by the foreign state in which the remotely located individual is
16 located.

17 (c) A notary public shall not use communication technology to notarize:

18 (1) a record related to the electoral process; or

19 (2) a will, codicil, or document purporting to be a will or codicil.

20 (d) If a notarial act is performed under this section, the certificate of
21 notarial act required by section 5367 of this title and the short-form certificate

1 ~~provided in section 5368 of this title shall indicate that the notarial act was~~
2 performed using communication technology and identify the venue of the
3 notarial act as the county within this State where the notary public is
4 physically located while performing the notarial act.

5 (e) A short-form certificate provided in section 5368 of this title for a
6 notarial act subject to this section is sufficient if it:

7 (1) complies with rules adopted under section 5323 of this title; or

8 (2) is in the form provided in section 5368 of this title and contains a
9 statement substantially as follows: “This notarial act involved the use of
10 communication technology.”

11 (f) A notary public, a guardian, conservator, or agent of a notary public or
12 a personal representative of a deceased notary public shall retain the
13 audiovisual recording created under subdivision (b)(4) of this section or cause
14 the recording to be retained by a repository designated by or on behalf of the
15 person required to retain the recording. The recording must be retained for a
16 period of at least 10 years after the recording is made.

17 (g) Before a notary public performs the notary public’s initial notarial act
18 under this section, the notary public must:

19 (1) Notify the Office that the notary public will be performing notarial
20 acts with respect to remotely located individuals and identify the technologies
21 the notary public intends to use. If the Office has established standards under

1 ~~section 5323 of this title for approval of communication technology or identity~~
2 proofing, the communication technology and identity proofing must conform
3 to the standards.

4 (2) Complete any training required by this section or that may be
5 required by the Office.

6 (h) In addition to adopting rules under section 5323 of this title, the Office
7 may adopt rules under this section regarding performance of a notarial act.

8 The rules may:

9 (1) prescribe the means of performing a notarial act involving a
10 remotely located individual using communication technology;

11 (2) establish standards for communication technology and identity
12 proofing;

13 (3) establish requirements or procedures to approve providers of
14 communication technology and the process of identity proofing; and

15 (4) establish standards and a period for the retention of an audiovisual
16 recording created under subdivision (b)(4) of this section.

17 (i) Before adopting, amending, or repealing a rule governing performance
18 of a notarial act with respect to a remotely located individual, the Office must
19 consider:

20 (1) the most recent standards regarding the performance of a notarial act
21 with respect to a remotely located individual promulgated by national

1 ~~standard setting organizations, such as the Mortgage Industry Standards and~~
2 Maintenance Organization, and the recommendations of the National
3 Association of Secretaries of State;

4 (2) standards, practices, and customs of other jurisdictions that have
5 laws substantially similar to this section; and

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

8 (j) By allowing its communication technology or identity proofing to
9 facilitate a notarial act for a remotely located individual or by providing
10 storage of the audiovisual recording created under subdivision (b)(4) of this
11 section, the provider of the communication technology, identity proofing, or
12 storage appoints the Office as the provider's agent for service of process in any
13 civil action in this State related to the notarial act.

14 (k) Unless and until the Secretary adopts rules setting standards that are
15 equally or more protective, the following minimum standards shall apply to
16 notarizations utilizing communication technology performed by a notary
17 public in this State:

18 (1) Use of identity proofing by means of dynamic knowledge-based
19 authentication which must have, at a minimum, the following security
20 characteristics.

1 ~~(A) The remotely located individual must be presented with five or~~
2 ~~more questions with a minimum of five possible answer choices per question.~~

3 ~~(B) Each question must be drawn from a third-party provider of~~
4 ~~public and proprietary data sources and be identifiable to the Social Security~~
5 ~~number or other identification information of the remotely located individual,~~
6 ~~or such individual's identity and historical events records.~~

7 ~~(C) Responses to all questions must be made within a two-minute~~
8 ~~time constraint.~~

9 ~~(D) The remotely located individual must answer a minimum of~~
10 ~~80 percent of the questions correctly.~~

11 ~~(E) The remotely located individual may be offered one additional~~
12 ~~attempt in the event of a failed attempt.~~

13 ~~(F) During the second attempt, the remotely located individual may~~
14 ~~not be presented with more than three questions from the prior attempt.~~

15 ~~(2) Use of credential analysis using one or more commercially available~~
16 ~~automated software or hardware processes that are consistent with sound~~
17 ~~commercial practices; that aid the notary public in verifying the authenticity of~~
18 ~~the credential by analyzing the integrity of visual, physical, or cryptographic~~
19 ~~security features to indicate that the credential is not fraudulent or~~
20 ~~inappropriately modified; and that use information held or published by the~~
21 ~~issuing source or authoritative source, as available, to confirm the validity of~~

1 ~~credential details. The output of the credential analysis process must be~~
2 ~~provided to the notary public performing the notarial act.~~

3 ~~(3) Use of audio-video communication technology in completing~~
4 ~~notarization that must meet the following requirements:~~

5 ~~(A) The signal transmission must be reasonably secure from~~
6 ~~interception, access, or viewing by anyone other than the participants~~
7 ~~communicating.~~

8 ~~(B) The technology must provide sufficient audio clarity and video~~
9 ~~resolution to enable the notary to communicate with the remotely located~~
10 ~~individual and any witness and to confirm the identity of the remotely located~~
11 ~~individual and any witness, as required, using identity proofing.~~

12 ~~(4) The communication technology is deemed to have satisfied tamper-~~
13 ~~evident technology requirements by use of technology that renders any~~
14 ~~subsequent change or modification to the electronic record evident.~~

15 ~~(5) In addition to any coverage it elects to provide for individual~~
16 ~~notaries public, maintenance of errors and omissions insurance coverage by a~~
17 ~~communication technology service provider in a total amount of at least~~
18 ~~\$250,000.00 in the annual aggregate with respect to potential errors or~~
19 ~~omissions in or relating to the technology or processes provided by the~~
20 ~~communication technology service provider. A notary public is not~~

1 ~~responsible for the security of the systems used by the remotely located~~
2 ~~individual or others to access the notarization session.~~

3 (1) Notwithstanding any provision of this chapter to the contrary, with
4 respect to any document executed in the course of closing a transaction
5 involving a mortgage or other conveyance of title to residential property, only
6 a notary public appointed pursuant to this chapter who is an attorney licensed
7 to practice law in this State or a nonattorney under the direct supervision of
8 such an attorney shall perform an acknowledgment, affirmation, or other
9 notarial act utilizing communication technology. The notarial certificate
10 affixed to any such document shall recite the Vermont Bar license number of
11 the Vermont attorney notary or of the supervising Vermont attorney in the
12 event that the document is notarized by a paralegal.

13 § 5380. JOURNAL

14 (a) For all acknowledgements taken pursuant to section 5379 of this title, a
15 notary public shall maintain a journal in which the notary public chronicles all
16 notarial acts that the notary public performs pursuant to that section. The
17 notary public shall retain such journal for a period of at least 10 years.

18 (b) A journal may be created on a tangible medium or in an electronic
19 format. If the journal is maintained on a tangible medium, it must be a
20 permanent, bound register with numbered pages. If the journal is maintained

1 ~~in an electronic format, it must be in a permanent, tamper-evident electronic~~
2 ~~format complying with the rules of the Secretary of State.~~

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

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

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

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

9 (4) a notation indicating whether the notarial act was conducted in
10 person or remotely;

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

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

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

18 (d) If a notary public's journal is lost or stolen, the notary public promptly
19 shall notify the Secretary of State on discovering that the journal is lost or
20 stolen.

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

5 ~~(f) Instead of retaining a journal as provided in subsections (a) and (e) of~~
6 ~~this section, a current or former notary public may transmit the journal to the~~
7 ~~Secretary of State, or a repository approved by the Secretary of State.~~

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

12 Sec 4. 27 V.S.A. chapter 5, subchapter 3A is added to read:

13 Subchapter 3A. Uniform Real Property Electronic Recording Act

14 § 420. SHORT TITLE

15 This subchapter may be cited as the Uniform Real Property Electronic
16 Recording Act.

17 § 421. DEFINITIONS

18 As used in this subchapter:

19 (1) "Document" means information that is:

20 (A) inscribed on a tangible medium or that is stored in an electronic
21 or other medium and is retrievable in perceivable form, and

1 ~~(B) eligible to be recorded in the land records maintained by the~~
2 ~~town clerks' offices.~~

3 ~~(2) "Electronic" means relating to technology having electrical, digital,~~
4 ~~magnetic, wireless, optical, electromagnetic, or similar capabilities.~~

5 ~~(3) "Electronic record" means a record created, generated, sent,~~
6 ~~communicated, received, or stored by electronic means.~~

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

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

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

17 ~~§ 422. VALIDITY OF ELECTRONIC DOCUMENTS; RECORDATION OF~~
18 ~~ELECTRONIC DOCUMENTS IN TANGIBLE FORM.~~

19 ~~(a) If a law requires, as a condition for recording, that a document be an~~
20 ~~original, be on paper or another tangible medium, or be in writing, the~~
21 ~~requirement is satisfied by an electronic document satisfying this section.~~

1 ~~(b) If a law requires, as a condition for recording, that a document be~~
2 ~~signed, the requirement is satisfied by an electronic signature.~~

3 ~~(c) A requirement that a document or a signature associated with a~~
4 ~~document be notarized, acknowledged, verified, witnessed, or made under oath~~
5 ~~is satisfied if the electronic signature of the person authorized to perform that~~
6 ~~act, and all other information required to be included, is attached to or~~
7 ~~logically associated with the document or signature. A physical or electronic~~
8 ~~image of a stamp, impression, or seal need not accompany an electronic~~
9 ~~signature.~~

10 ~~(d) A town clerk's office shall accept for recording a tangible copy of an~~
11 ~~electronic document containing a notarial certificate as satisfying any~~
12 ~~requirement that a document accepted for recording be an original if the~~
13 ~~notarial officer executing the notarial certificate certifies that the tangible copy~~
14 ~~is an accurate copy of the electronic document. A notarial certificate in the~~
15 ~~form provided in 26 V.S.A. § 5368 satisfies the requirements of this~~
16 ~~subsection.~~

17 § 423. RECORDING OF DOCUMENTS

18 ~~(a) As used in this section, "paper document" means a document that is~~
19 ~~received by a town clerk's office in a form that is not electronic.~~

20 ~~(b) A town clerk's office.~~

1 ~~(1) may receive, index, store, archive, and transmit electronic~~
2 ~~documents;~~

3 ~~(2) may provide for access to, and for search and retrieval of,~~
4 ~~documents and information by electronic means;~~

5 ~~(3) that accepts electronic documents for recording shall continue to~~
6 ~~accept paper documents as authorized by State law and shall place entries for~~
7 ~~both types of documents in the same index;~~

8 ~~(4) may convert paper documents accepted for recording into electronic~~
9 ~~form;~~

10 ~~(5) may convert into electronic form information recorded before the~~
11 ~~town clerk's office began to record electronic documents;~~

12 ~~(6) may accept electronically any fee or tax that the town clerk's office~~
13 ~~is authorized to collect; and~~

14 ~~(7) may agree with other officials of a state or a political subdivision~~
15 ~~thereof, or of the United States, on procedures or processes to facilitate the~~
16 ~~electronic satisfaction of prior approvals and conditions precedent to recording~~
17 ~~and the electronic payment of fees and taxes.~~

18 § 424. ADMINISTRATION AND STANDARDS

19 To keep the standards and practices of the town clerks' offices in this State
20 ~~in harmony with other jurisdictions in this State, a town clerk's office, so far as~~

1 ~~is consistent with the purposes, policies, and provisions of this chapter, in~~
2 adopting, amending, and repealing standards, shall consider the following:

3 (1) standards and practices of other jurisdictions;

4 (2) best practices that are accepted or prescribed as being correct or
5 most effective;

6 (3) the views of interested persons and governmental officials and
7 entities;

8 (4) the needs of municipalities of varying size, population, and
9 resources; and

10 (5) standards requiring adequate information security protection to
11 ensure that electronic documents are accurate, authentic, adequately preserved,
12 and resistant to tampering.

13 § 425. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

17 § 426. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
18 NATIONAL COMMERCE ACT

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

1 ~~authorize electronic delivery of any of the notices described in Section 103(b)~~
2 ~~of that act, 15 U.S.C. § 7003(b).~~

3 Sec. 4. EFFECTIVE DATE

4 ~~This act shall take effect on July 1, 2022.~~

Sec. 1. FINDINGS AND INTENT

(a) The General Assembly finds:

(1) Uniform laws, standards, and best practices provide desirable and practicable uniformity that:

(A) benefits core aspects of government operations and commerce;

(B) facilitates intrastate and interstate business transactions, commerce, and economic development; and

(C) provides consistency for individuals and businesses.

(2) Notarial acts and the recording of deeds and other property records are:

(A) core aspects of government operations and commerce that benefit from uniformity; and

(B) common intrastate and interstate business transactions that should be consistent and facilitated through the enactment of uniform laws and adoption of uniform standards and best practices.

(3) The Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws, has adopted uniform

laws related to notarial acts and the recording of deeds and other property records that have been accepted and enacted into law by a substantial number of states, including:

(A) the Revised Uniform Law on Notarial Acts or “RULONA” of 2010, which was enacted by the General Assembly pursuant to 2018 Acts and Resolves No. 160 to govern actions by a notary public;

(B) the Uniform Electronic Transaction Act or “UETA” of 1999, which was enacted by the General Assembly pursuant to 2003 Acts and Resolves No. 46 to establish the legal equivalence of electronic records and signatures with paper records and manually signed signatures and remove barriers to electronic commerce; and

(C) the Uniform Real Property Electronic Recording Act or “URPERA” of 2004, which has not been enacted by the General Assembly to allow local recording offices to accept deeds and other property records in electronic form and to provide electronic access to recordings.

(4) The COVID-19 pandemic exacerbated the need to modernize:

(A) notarial acts to include those performed on electronic records and for remotely located individuals; and

(B) the acceptance, recording, and availability of deeds and other property records in electronic form.

(5) The COVID-19 pandemic underscored the need for approaches to modernization that are carefully planned; coordinated and comprehensive; multi-jurisdictional; and include fiscal, governance, and operational sustainability.

(b) Therefore, it is the intent of the General Assembly to provide a practical step forward to modernizing notarial acts and the recording of deeds and other property records in the State of Vermont through legislation that promotes uniformity within Vermont and with other states, specifically:

(1) uniform laws that have been accepted and enacted into law by a substantial number of states;

(2) uniform standards and best practices that have been accepted and adopted by a substantial number of states; and

(3) uniform approaches to modernization that are carefully planned; coordinated; comprehensive; multi-jurisdictional; and have fiscal, governance, and operational sustainability.

Sec. 2. 27 V.S.A. chapter 5, subchapter 8 is added to read:

Subchapter 8. Uniform Real Property Electronic Recording Act

§ 621. SHORT TITLE

This subchapter may be cited as the Uniform Real Property Electronic Recording Act.

§ 622. DEFINITIONS

For the purposes of this subchapter:

(1) “Document” means information that is:

(A) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(B) eligible to be recorded in the land records maintained by the recorder.

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

(3) “Electronic document” means a document that is received by the recorder in an electronic form.

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

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

(6) “Recorder” means a town clerk, pursuant to 24 V.S.A. § 1154, or a county clerk, pursuant to subchapter 3 of this chapter, responsible for recording deeds and other instruments or evidences respecting real estate.

(7) “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.

§ 623. VALIDITY OF ELECTRONIC DOCUMENTS

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this subchapter.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

§ 624. RECORDING OF DOCUMENTS

(a) In this section, “paper document” means a document that is received by the recorder in a form that is not electronic.

(b) A recorder:

(1) who implements any of the functions listed in this section shall do so in compliance with the most recent standards and best practices;

(2) may receive, index, store, transmit, and preserve electronic documents;

(3) may provide for access to, and for search and retrieval of, documents and information by electronic means;

(4) who accepts electronic documents for recording shall continue to accept paper documents as authorized by State law and shall place entries for both types of documents in the same index;

(5) may convert paper documents accepted for recording into electronic form;

(6) may convert into electronic form information recorded before the recorder began to record electronic documents;

(7) may accept electronically any fee the recorder is authorized to collect; and

(8) may agree with other officials of this State or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees.

~~§ 625. STANDARDS AND BEST PRACTICES.~~

~~To ensure consistency in the standards and best practices of, and the technologies used by, recorders in this State, recorders shall, so far as is consistent with the purposes, policies, and provisions of this subchapter, seek services from the Vermont State Archives and Records Administration pursuant to 3 V.S.A. § 117.~~

§ 625. STANDARDS AND BEST PRACTICES

To ensure consistency in the standards and best practices of, and the technologies used by, recorders in this State, all recordings of deeds and other instruments or evidences respecting real estate, regardless of format, shall comply with standards and best practices issued by the Vermont State Archives and Records Administration pursuant to 3 V.S.A. § 117. Recorders shall seek services from the Vermont State Archives and Records Administration to comply with the standards and best practices issued in accordance with this subchapter. No provisions of this subchapter shall be implemented unless a recorder has complied with the standards and best practices issued by the Vermont State Archives and Records Administration in accordance with this subchapter.

§ 626. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND

NATIONAL COMMERCE ACT

This subchapter modifies, limits, and supersedes the federal 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)).

Sec. 3. VERMONT STATE ARCHIVES AND RECORDS

ADMINISTRATION; REPORT

~~*(a) On or before January 15, 2024, the Vermont State Archives and Records Administration, in consultation with the Joint Fiscal Office, the Vermont League of Cities and Towns, the Vermont Municipal Clerks' and Treasurers' Association, and other interested parties, shall submit a report to the House Committees on Commerce and Economic Development and Government Operations and the Senate Committees on Economic Development, Housing and General Affairs and Government Operations concerning the fiscal, governance, and operational sustainability of uniform approaches to the modernization of the acceptance, recording, and availability of deeds and other property records in electronic form.*~~

(a)(1) On or before January 15, 2024, the Vermont State Archives and Records Administration shall submit a report to the House Committees on Commerce and Economic Development and on Government Operations and the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations concerning the fiscal, governance, and operational sustainability of uniform approaches to the modernization of the

acceptance, recording, and availability of deeds and other property records, regardless of format.

(2) For the report required by this subsection, the Vermont State Archives and Records Administration shall consult with:

(A) the Joint Fiscal Office;

(B) the Vermont League of Cities and Towns;

(C) the Vermont Municipal Clerks' and Treasurers' Association;

(D) representatives from the banking, bar, title insurance, and real estate industry; and

(E) other interested parties.

(b) The report shall be based on analyses of the following:

(1) services requested by recorders pursuant to 27 V.S.A. § 625 to achieve consistency and uniformity in standards and best practices;

(2) systems currently deployed by recorders and associated costs; and

(3) anticipated recorder costs to transition to electronic recording pursuant to 27 V.S.A. chapter 5, subchapter 8.

(c) On or before January 15, 2023, the Vermont State Archives and Records Administration shall prepare an interim report concerning the information and analyses required by this section and submit the interim report to the House Committees on Commerce and Economic Development and Government

Operations and the Senate Committees on Economic Development, Housing
and General Affairs and Government Operations

Sec. 4. VERMONT STATE ARCHIVES AND RECORDS

ADMINISTRATION; POSITION

There is created within Vermont State Archives and Records Administration
one new permanent classified position to facilitate and provide the services
described in 27 V.S.A. § 625. Any funding necessary to support the position
created in this section shall be derived from the Secretary of State Services
Fund, with no General Fund dollars.

Sec. 5. 26 V.S.A. chapter 103 is amended to read:

CHAPTER 103. NOTARIES PUBLIC

** * **

§ 5304. DEFINITIONS

As used in this chapter:

** * **

(4) “Communication technology” means an electronic device or process
operating in accordance with section 5380 of this chapter and any standards
adopted by the Office pursuant to section 5323 of this chapter that:

(A) allows a notary public and a remotely located individual to
communicate with each other simultaneously by sight and sound; and

(B) when necessary and consistent with other applicable laws, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

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

(5)(6) “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.

(7) “Foreign state” means a government other than the United States, a state, or a federally recognized Indian tribe.

(8) “Identity proofing” means a process or service operating in accordance with section 5380 of this chapter and any standards adopted by the Office pursuant to section 5323 of this chapter by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

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

* * *

(7)(10)(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, certifying or attesting a copy, and noting a protest of a negotiable instrument.

* * *

~~(8)(11) “Notarial officer” means an individual authorized to perform a notarial act under authority and within the jurisdiction of another state, under authority and within the jurisdiction of a federally recognized Indian tribe, under authority of federal law, under authority and within the jurisdiction of a foreign state or constituent unit of the foreign state, or under authority of a multinational or international governmental organization~~ a notary public or other individual authorized to perform a notarial act.

~~(9)(12) “Notary public” means an individual commissioned to perform a notarial act by the Office.~~

~~(10)(13) “Office” means the Office of Professional Regulation within the Office of the Secretary of State.~~

~~(11)(14) “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.~~

~~(15) “Outside the United States” means a location outside the geographic boundaries of the United States; Puerto Rico; the U.S. Virgin~~

Islands; and any territory, insular possession, or other location subject to the jurisdiction of the United States.

~~(12)~~(16) “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)~~(17) “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.

(18) “Remotely located individual” means an individual who is not in the physical presence of the notary public who performs a notarial act under section 5379 of this chapter.

~~(14)~~(19) “Sign” means, with present intent to authenticate or adopt a record:

* * *

~~(15)~~(20) “Signature” means a tangible symbol or an electronic signature that evidences the signing of a record.

~~(16)~~(21) “Stamping device” means:

* * *

~~(17)~~(22) “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)~~(23) “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.

* * *

§ 5323. RULES

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

* * *

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

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

~~(6) prescribe standards for remote online notarization, including standards for credential analysis, the process through which a third person affirms the identity of an individual, the methods for communicating through a~~

~~secure communication link, the means by which the remote notarization is certified, and the form of notice to be appended disclosing the fact that the notarization was completed remotely on any document acknowledged through remote online notarization~~ the means of performing a notarial act involving a remotely located individual using communication technology;

(7) establish standards for communication technology and identity proofing;

(8) establish standards and a period for the retention of an audiovisual recording created under section 5379 of this chapter; and

(9) prescribe methods for a notary public to confirm, under subsections 5379(c) and (d) of this chapter, the identity of a tangible record.

(b) Rules adopted regarding the performance of notarial acts with respect to electronic records and remote online notarization 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 and remote online notarization, the Office shall consider, as far as is consistent with this chapter:

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

(2) standards, practices, and customs of other jurisdictions that have laws substantially enacted similar to this chapter; and

* * *

(c) ~~Neither electronic notarization nor remote online notarization shall be allowed until the Secretary of State has adopted rules and prescribed standards in these areas. [Repealed.]~~

§ 5324. FEES

(a) For the issuance of a commission as a notary public, the Office shall collect a fee of ~~\$15.00~~ \$30.00.

(b) For issuance of a special endorsement authorizing the performance of electronic and remote notarial acts in accordance with subsection 5341(d) of this chapter, the Office shall collect a fee of \$30.00.

* * *

§ 5341. COMMISSION AS NOTARY PUBLIC; QUALIFICATIONS; NO

IMMUNITY OR BENEFIT

* * *

(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~~ A notary public shall not perform a notarial act on an electronic record or for a remotely located individual without obtaining a special endorsement from the Office. A notary public shall hold a

notary public commission to be eligible for a special endorsement to perform notarial acts on electronic records and for remotely located individuals. The Office shall adopt rules for obtaining and regulating a special commission endorsement authorizing a notary public to perform notarial acts on electronic records and for remotely located individuals. These rules shall require notaries public performing notarial acts on electronic records and for remotely located individuals to ensure the communication technology and identity proofing used for the performance of the notarial act on electronic records or for remotely located individuals comply with the requirements of section 5380 of this chapter and any rules adopted by the Office in accordance with section 5323 of this chapter. A notary public shall apply for the special commission endorsement for the performance of notarial acts on electronic records and for remotely located individuals by filing with the Office an application provided by the Office accompanied by the required fees and evidence of eligibility, as required in rules adopted by the Office in accordance with section 5323 of this chapter.

(e) A commission to act as a notary public authorizes the notary public to perform notarial acts except for notarial acts on electronic records or for remotely located individuals. A commission with a special endorsement issued under subsection (d) of this section authorizes a notary public to perform notarial acts on electronic records and for remotely located individuals. The

commission does not provide the notary public any immunity or benefit conferred by law of this State on public officials or employees.

* * *

§ 5362. *AUTHORIZED NOTARIAL ACTS*

(a) A notary public may perform a notarial act as authorized by and in accordance with the requirements of this chapter or otherwise by law of this State.

* * *

(c) A notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

§ 5363. *REQUIREMENTS FOR CERTAIN NOTARIAL ACTS*

* * *

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

§ 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) ~~The requirement for a personal appearance is satisfied if:~~

~~(1) the notary public and the person executing the signature are in the same physical place; or~~

~~(2) the notary public and the person are communicating through a secure communication link using protocols and standards prescribed in rules adopted by the Secretary of State pursuant to the rulemaking authority set forth in this chapter. [Repealed.]~~

* * *

§ 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:

* * *

(5) For certifying a copy of a record:

State of _____

County of _____

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

Dated _____

Signature of notarial officer _____

Stamp _____

Title of office _____ [My commission expires: _____]

* * *

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

(a) A notary public holding a special commission endorsement pursuant to subsection 5341(d) of this title and who is thus authorized to perform notarial acts on electronic records 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. A recorder, as defined in 27 V.S.A. § 622, may accept for recording a tangible copy of an electronic record containing a notarial certificate as~~

satisfying any requirement that a record accepted for recording be an original, if the notary public executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

* * *

§ 5379. NOTARIAL ACT PERFORMED FOR REMOTELY LOCATED

INDIVIDUAL

(a) A remotely located individual may comply with section 5364 of this chapter by using communication technology to appear before a notary public with a special commission endorsement.

(b) A notary public located in this State may perform a notarial act using communication technology for a remotely located individual if:

(1) the notary public holds a special commission endorsement pursuant to subsection 5341(d) of this title;

(2) the notary public:

(A) has personal knowledge under subsection 5365(a) of this chapter of the identity of the individual;

(B) has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under subsection 5365(b) of this chapter; or

(C) has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

(3) the notary public is reasonably able to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;

(4) the notary public, or a person acting on behalf of the notary public, creates an audiovisual recording of the performance of the notarial act; and

(5) for a remotely located individual located outside the United States:

(A) the record:

(i) is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or

(ii) involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and

(B) the act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

(c) A notary public in this State may use communication technology under subsection (b) of this section to take an acknowledgement of a signature on a tangible record physically present before the notary public if the record is displayed to and identified by the remotely located individual during the audiovisual recording under subdivision (b)(4) of this section.

(d) The requirement under subdivision (b)(3) of this section for the performance of a notarial act with respect to a tangible record not physically present before the notary public is satisfied if:

(1) the remotely located individual:

(A) during the audiovisual recording under subdivision (b)(4) of this section, signs:

(i) the record; and

(ii) a declaration, in substantially the following form, that is part of or securely attached to the record:

I declare under penalty of perjury that the record of which this declaration is part or to which it is attached is the same record on which (name of notary public), a notary public, performed a notarial act and before whom I appeared by means of communication technology on _____ (date).

Signature of remotely located individual

Printed name of remotely located

individual _____; and

(B) sends the record and declaration to the notary public not later than three days after the notarial act was performed; and

(2) the notary public:

(A) in the audiovisual recording under subdivision (b)(4) of this section, records the individual signing the record and declaration; and

(B) after receipt of the record and declaration from the individual, executes a certificate of notarial act under section 5367 of this chapter, which must include a statement in substantially the following form:

I, (name of notary public), witnessed, by means of communication technology, (name of remotely located individual) sign the attached record and declaration on (date).

(e) A notarial act performed in compliance with subsection (d) of this section complies with subdivision 5367(a)(1) of this chapter and is effective on the date the remotely located individual signed the declaration under subdivision (d)(1)(A)(ii) of this section.

(f) Subsection (d) of this section does not preclude use of another procedure to satisfy subdivision (b)(3) of this section for a notarial act performed with respect to a tangible record.

(g) A notary public located in this State may use communication technology under subsection (b) of this section to administer an oath or affirmation to a remotely located individual if, except as otherwise provided by other law of this State, the notary public:

(1) identifies the individual under subdivision (b)(2) of this section;

(2) creates or causes the creation under subdivision (b)(4) of this section of an audiovisual recording of the individual taking the oath or affirmation; and

(3) retains or causes the retention under subsection (k) of this section of the recording.

(h) The notary public shall ensure that the communication technology and identity proofing used to perform a notarial act for a remotely located individual complies with section 5380 of this chapter and any standards adopted by the Office in accordance with section 5323 of this chapter.

(i) If a notarial act is performed under this section, the certificate of notarial act required by section 5367 of this chapter and the short-form certificate provided in section 5368 of this chapter must indicate that the notarial act was performed using communication technology.

(j) A short-form certificate provided in section 5368 of this chapter for a notarial act subject to this section is sufficient if it:

(1) complies with rules adopted under section 5323 of this chapter; or

(2) is in the form provided in section 5367 of this chapter and contains a statement substantially as follows: “This notarial act involved the use of communication technology.”

(k) A notary public, guardian, conservator, or agent of a notary public or a personal representative of a deceased notary public shall retain the

audiovisual recording created under subdivision (b)(4) of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rules adopted under section 5323 of this chapter, the recording must be retained for a period of at least 10 years after the recording is made.

(l) Providers of the communication technologies, identity proofing, or storage must be registered with the Secretary of State to do business in Vermont and, by allowing communication technology or identity proofing to facilitate a notarial act of an electronic record or for a remotely located individual or by providing storage of the audiovisual recording under subdivision (b)(3) of this section, providers of the communication technology, identity proofing, or storage consent and agree that the service or process being provided is in compliance with the requirements set forth in this chapter and with any rules adopted by the Office.

§ 5380. COMPUTER TECHNOLOGY AND IDENTITY PROOFING

PROVIDERS; MINIMUM STANDARDS

(a) Communication technology and identity proofing providers shall develop, maintain, and implement processes and services that are consistent with the requirements of this chapter and industry standards and best practices for the process or service provided. Providers must also comply with all applicable federal and State regulations, rules, and standards, including:

(1) with respect to communication technology, regulations, rules, and standards specific to simultaneous communication by sight and sound and information and communication technology for individuals with physical, sensory, and cognitive disabilities; and

(2) with respect to identity proofing, regulations, rules, and standards specific to the enrollment and verification of an identity used in digital authentication.

(b) A provider of communication technology or identity proofing shall provide evidence to the notary public's satisfaction of the provider's ability to satisfy the requirements of this chapter for the service or process being provided.

~~Sec. 5. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2022.~~

Sec. 6. EFFECTIVE DATES

(a) This section and Sec. 4 (Vermont State Archives and Records Administration; position) shall take effect on passage.

(b) Secs. 1, 2, 3, and 5 shall take effect on July 1, 2022.