

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was  
3 referred House Bill No. 512 entitled “An act relating to modernizing land  
4 records and notarial acts law” respectfully reports that it has considered the  
5 same and recommends that the bill be amended by striking out all after the  
6 enacting clause and inserting in lieu thereof the following:

7 Sec. 1. 27 V.S.A. chapter 5, subchapter 8 is added to read:

8 Subchapter 8. Uniform Real Property Electronic Recording Act

9 § 617. SHORT TITLE

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

12 § 618. DEFINITIONS

13 For the purposes of this subchapter:

14 (1) “Document” means information that is:

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

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

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

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

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

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

10           (6) “Recorder” means a town clerk, pursuant to 24 V.S.A. § 1154, or a  
11 county clerk, pursuant to 27 V.S.A. chapter 5, subchapter 3, responsible for  
12 recording deeds and other instruments or evidences respecting real estate.

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

16           § 619. VALIDITY OF ELECTRONIC DOCUMENTS

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

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 logically  
7        associated with the document or signature. A physical or electronic image of a  
8        stamp, impression, or seal need not accompany an electronic signature.

9        § 620. RECORDING OF DOCUMENTS

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

12       (b) A recorder:

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

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

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

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

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

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

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

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

14           § 621. ADMINISTRATION AND FEES

15           (a) To ensure consistency in the standards and best practices of, and the  
16           technologies used by recorders in this State, recorders shall, so far as is  
17           consistent with the purposes, policies, and provisions of this subchapter, seek  
18           services from the Statewide Records and Information Management Program,  
19           as defined in 3 V.S.A. § 117(b) and administered by the Vermont State  
20           Archives and Records Administration.

1        (b) The Secretary of State, pursuant to 3 V.S.A. § 117(e), may adopt rules  
2 after taking into consideration:

3            (1) the most recent standards promulgated by national bodies, such as  
4 the Property Records Industry Association;

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

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

9        § 621. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND  
10            NATIONAL COMMERCE ACT

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

16        Sec. 2. VERMONT STATE ARCHIVES AND RECORDS

17            ADMINISTRATION; POSITION

18        There is created within Vermont State Archives and Records  
19 Administration one new permanent classified position to facilitate and provide  
20 the services described in 27 V.S.A. § 621. Any funding necessary to support

1 the position created in this section shall be derived from the Secretary of State  
2 Services Fund, with no General Fund dollars.

3 Sec. 3. 26 V.S.A. chapter 103 is amended to read:

4 CHAPTER 103. NOTARIES PUBLIC

5 \* \* \*

6 § 5304. DEFINITIONS

7 As used in this chapter:

8 \* \* \*

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

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

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

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



1           ~~(8)~~(11) “Notarial officer” means ~~an individual authorized to perform a~~  
2           ~~notarial act under authority and within the jurisdiction of another state, under~~  
3           ~~authority and within the jurisdiction of a federally recognized Indian tribe,~~  
4           ~~under authority of federal law, under authority and within the jurisdiction of a~~  
5           ~~foreign state or constituent unit of the foreign state, or under authority of a~~  
6           ~~multinational or international governmental organization~~ a notary public or  
7           other individual authorized to perform a notarial act.

8           ~~(9)~~(12) “Notary public” means an individual commissioned to perform a  
9           notarial act by the Office.

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

12           ~~(11)~~(14) “Official stamp” means a physical image affixed to or  
13           embossed on a tangible record or an electronic ~~process, seal, or image or~~  
14           ~~electronic information~~ attached to or logically associated with an electronic  
15           record.

16           (15) “Outside the United States” means a location outside the  
17           geographic boundaries of the United States, Puerto Rico, the U.S. Virgin  
18           Islands, and any territory, insular possession, or other location subject to the  
19           jurisdiction of the United States.





1           ~~(18)~~(23) “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   \* \* \*

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   \* \* \*

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

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

16           (6) ~~prescribe standards for remote online notarization, including~~  
17           ~~standards for credential analysis, the process through which a third person~~  
18           ~~affirms the identity of an individual, the methods for communicating through a~~  
19           ~~secure communication link, the means by which the remote notarization is~~  
20           ~~certified, and the form of notice to be appended disclosing the fact that the~~

1 ~~notarization was completed remotely on any document acknowledged through~~  
2 ~~remote online notarization~~ the means of performing a notarial act involving a  
3 remotely located individual using communication technology;

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

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

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

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

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

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

3 \* \* \*

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

7 § 5324. FEES

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

10 (b) For issuance of a special endorsement authorizing the performance of  
11 electronic and remote notarial acts in accordance with subsection 5341(d) of  
12 this chapter, the Office shall collect a fee of [XXX.XX].

13 \* \* \*

14 § 5341. COMMISSION AS NOTARY PUBLIC; QUALIFICATIONS; NO

15 IMMUNITY OR BENEFIT

16 \* \* \*

17 (d) ~~Upon compliance with this section, the Office shall issue a commission~~  
18 ~~as a notary public to an applicant, which shall be valid through the then current~~  
19 ~~commission term end date~~ A notary public shall not perform a notarial act on  
20 an electronic record or for a remotely located individual without obtaining a

1 special endorsement from the Office. A notary public shall hold a notary  
2 public commission to be eligible for a special endorsement to perform notarial  
3 acts on electronic records and for remotely located individuals. The Office  
4 shall adopt rules for obtaining and regulating a special commission  
5 endorsement authorizing a notary public to perform notarial acts on electronic  
6 records and for remotely located individuals. These rules shall require notaries  
7 public performing notarial acts on electronic records and for remotely located  
8 individuals to ensure the communication technology and identity proofing used  
9 for the performance of the notarial act on electronic records or for remotely  
10 located individuals comply with the requirements of section 5380 of this  
11 chapter and any rules adopted by the Office in accordance with section 5323 of  
12 this chapter. A notary public shall apply for the special commission  
13 endorsement for the performance of notarial acts on electronic records and for  
14 remotely located individuals by filing with the Office an application provided  
15 by the Office accompanied by the required fees and evidence of eligibility, as  
16 required in rules adopted by the Office in accordance with section 5323 of this  
17 chapter.

18 (e) A commission to act as a notary public authorizes the notary public to  
19 perform notarial acts except for notarial acts on electronic records or for  
20 remotely located individuals. A commission with a special endorsement

1 issued under subsection 5342(d) of this chapter authorizes a notary public to  
2 perform notarial acts on electronic records and for remotely located  
3 individuals. The commission does not provide the notary public any immunity  
4 or benefit conferred by law of this State on public officials or employees.

5 \* \* \*

6 § 5362. AUTHORIZED NOTARIAL ACTS

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

10 \* \* \*

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

13 § 5363. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS

14 \* \* \*

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

1 § 5364. PERSONAL APPEARANCE REQUIRED

2 (a) If a notarial act relates to a statement made in or a signature executed on  
3 a record, the individual making the statement or executing the signature shall  
4 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 secure~~  
9 ~~communication link using protocols and standards prescribed in rules adopted~~  
10 ~~by the Secretary of State pursuant to the rulemaking authority set forth in this~~  
11 ~~chapter. [Repealed.]~~

12 \* \* \*

13 § 5368. SHORT-FORM CERTIFICATES

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

17 \* \* \*

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

19 State of \_\_\_\_\_

20 County of \_\_\_\_\_

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

2 \_\_\_\_\_

3 Dated \_\_\_\_\_

4 Signature of notarial officer \_\_\_\_\_

5 Stamp \_\_\_\_\_

6 Title of office \_\_\_\_\_ [My commission expires: \_\_\_\_\_]

7 \* \* \*

8 § 5371. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL  
9 ACT ON ELECTRONIC RECORD; SELECTION OF  
10 TECHNOLOGY

11 (a) A notary public holding a special commission endorsement pursuant to  
12 section 5341(d) and who is thus authorized to perform notarial acts on  
13 electronic records may select one or more tamper-evident technologies to  
14 perform notarial acts with respect to electronic records ~~from the tamper-~~  
15 ~~evident technologies approved by the Office by rule.~~ A person shall not  
16 require a notary public to perform a notarial act with respect to an electronic  
17 record with a technology that the notary public has not selected.

18 (b) ~~Before a notary public performs the notary public's initial notarial act~~  
19 ~~with respect to an electronic record, the notary public shall notify the Office~~  
20 ~~that the notary public will be performing notarial acts with respect to electronic~~



1 ~~records and identify the technology the notary public intends to use from the~~  
2 ~~list of technologies approved by the Office by rule. If the Office has~~  
3 ~~established standards by rule for approval of technology pursuant to section~~  
4 ~~5323 of this chapter, the technology shall conform to the standards. If the~~  
5 ~~technology conforms to the standards, the Office shall approve the use of the~~  
6 ~~technology~~ A recorder, as defined in 27 V.S.A. § 618, may accept for  
7 recording a tangible copy of an electronic record containing a notarial  
8 certificate as satisfying any requirement that a record accepted for recording be  
9 an original, if the notary public executing the notarial certificate certifies that  
10 the tangible copy is an accurate copy of the electronic record.

11 \* \* \*

12 § 5379. NOTARIAL ACT PERFORMED FOR REMOTELY LOCATED  
13 INDIVIDUAL

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

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

19 (1) the notary public:

1           (A) holds a special commission endorsement pursuant to subsection  
2           5341(d) of this chapter;

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

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

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

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

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

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

16           (A) the record:

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

19           United States; or

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

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

7                    (c) A notary public in this State may use communication technology under  
8                    subsection (b) of this section to take an acknowledgement of a signature on a  
9                    tangible record physically present before the notary public if the record is  
10                   displayed to and identified by the remotely located individual during the  
11                   audiovisual recording under subdivision (b)(3) of this section.

12                   (d) The requirement under subdivision (b)(2) of this section for the  
13                   performance of a notarial act with respect to a tangible record not physically  
14                   present before the notary public is satisfied if:

15                   (1) the remotely located individual:

16                   (A) during the audiovisual under subdivision (b)(3) of this section,  
17                   signs:

18                   (i) the record; and

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

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

5                   Signature of remotely located individual

6                   \_\_\_\_\_

7                   Printed name of remotely located

8                   individual \_\_\_\_\_ ; and

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

11                  (2) the notary public:

12                  (A) in the audiovisual recording under subdivision (b)(3) of this  
13                  section, records the individual signing the record and declaration; and

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

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

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

5       (f) Subsection (d) of this section does not preclude use of another  
6       procedure to satisfy subdivision (b)(2) of this section for a notarial act  
7       performed with respect to a tangible record.

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

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

13               (2) creates or causes the creation under subdivision (b)(3) of this section  
14       of an audiovisual recording of the individual taking the oath or affirmation;

15       and

16               (3) retains or causes the retention under subsection (j) of this section of  
17       the recording.

18       (h) The notary public shall ensure that the communication technology and  
19       identity proofing used to perform a notarial act for a remotely located

1 individual complies with section 5380 of this chapter and any standards  
2 adopted by the Office in accordance with section 5323 of this chapter.

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

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

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

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

13 (k) A notary public, a guardian, conservator, or agent of a notary public, or  
14 a personal representative of a deceased notary public shall retain the  
15 audiovisual recording created under subdivision (b)(3) of this section or cause  
16 the recording to be retained by a repository designated by or on behalf of the  
17 person required to retain the recording. Unless a different period is required by  
18 rules adopted under section 5323 of this chapter, the recording must be  
19 retained for a period of at least 10 years after the recording is made.

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

10       § 5380. COMPUTER TECHNOLOGY AND IDENTITY PROOFING

11               PROVIDERS; MINIMUM STANDARDS

12       (a) Communication technology and identity proofing providers shall  
13       develop, maintain, and implement processes and services that are consistent  
14       with the requirements of this chapter and industry standards and best practices  
15       for the process or service provided. Providers must also comply with all  
16       applicable Federal and State regulations, rules, and standards, including but not  
17       limited to:

18               (1) with respect to communication technology, regulations, rules and  
19       standards specific to simultaneous communication by sight and sound and

1 information and communication technology for individuals with physical,  
2 sensory, and cognitive disabilities; and  
3 (2) with respect to identity proofing, regulations, rules, and standards  
4 specific to the enrollment and verification of an identity used in digital  
5 authentication.

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

10 Sec. 4. EFFECTIVE DATE

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

12

13 (Committee vote: \_\_\_\_\_)

14

\_\_\_\_\_

15

Representative \_\_\_\_\_

16

FOR THE COMMITTEE