

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. FINDINGS AND INTENT

8 (a) The General Assembly finds:

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

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

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

14 (C) provides consistency for individuals and businesses.

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

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

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

4 (3) The Uniform Law Commission, also known as the National
5 Conference of Commissioners on Uniform State Laws, has adopted uniform
6 laws related to notarial acts and the recording of deeds and other property
7 records that have been accepted and enacted into law by a substantial number
8 of states, including:

9 (A) the Revised Uniform Law on Notarial Acts or “RULONA” of
10 2010, which was enacted by the General Assembly pursuant to 2018 Acts and
11 Resolves No. 160 to govern actions by a notary public;

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

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

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(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

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

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

5 Subchapter 8. Uniform Real Property Electronic Recording Act

6 § 621. SHORT TITLE

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

9 § 622. DEFINITIONS

10 For the purposes of this subchapter:

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

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

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

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

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

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

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

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

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

14 § 623. VALIDITY OF ELECTRONIC DOCUMENTS

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

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

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

7 § 624. RECORDING OF DOCUMENTS

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

10 (b) A recorder:

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

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

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

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

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

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

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

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

11 § 625. STANDARDS AND BEST PRACTICES

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

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

19 This subchapter modifies, limits, and supersedes the federal Electronic
20 Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.)

1 but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C.
2 § 7001(c)) or authorize electronic delivery of any of the notices described in
3 Section 103(b) of that act (15 U.S.C. § 7003(b)).

4 Sec. 3. VERMONT STATE ARCHIVES AND RECORDS

5 ADMINISTRATION; REPORT

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

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

17 (1) services requested by recorders pursuant to 27 V.S.A. § 621 to
18 achieve consistency and uniformity in standards and best practices;

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

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

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

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

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

11 ~~(5)~~(6) “Electronic signature” means an electronic symbol, sound, or
12 process attached to or logically associated with a record and executed or
13 adopted by an individual with the intent to sign the record.

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

16 (8) “Identity proofing” means a process or service operating in
17 accordance with section 5380 of this chapter and any standards adopted by the
18 Office pursuant to section 5323 of this chapter by which a third person
19 provides a notary public with a means to verify the identity of a remotely

1 located individual by a review of personal information from public or private
2 data sources.

3 ~~(6)~~(9) “In a representative capacity” means acting as:

4 * * *

5 ~~(7)~~(10)(A) “Notarial act” means an act, whether performed with respect
6 to a tangible or an electronic record, that a notary public may perform under
7 the law of this State. The term includes taking an acknowledgment,
8 administering an oath or affirmation, taking a verification on oath or
9 affirmation, attesting a signature, certifying or attesting a copy, and noting a
10 protest of a negotiable instrument.

11 * * *

12 ~~(8)~~(11) “Notarial officer” means ~~an individual authorized to perform a~~
13 ~~notarial act under authority and within the jurisdiction of another state, under~~
14 ~~authority and within the jurisdiction of a federally recognized Indian tribe,~~
15 ~~under authority of federal law, under authority and within the jurisdiction of a~~
16 ~~foreign state or constituent unit of the foreign state, or under authority of a~~
17 ~~multinational or international governmental organization~~ a notary public or
18 other individual authorized to perform a notarial act.

19 ~~(9)~~(12) “Notary public” means an individual commissioned to perform a
20 notarial act by the Office.

1 ~~(10)~~(13) “Office” means the Office of Professional Regulation within
2 the Office of the Secretary of State.

3 ~~(11)~~(14) “Official stamp” means a physical image affixed to or
4 embossed on a tangible record or an electronic ~~process, seal, or image or~~
5 ~~electronic information~~ attached to or logically associated with an electronic
6 record.

7 (15) “Outside the United States” means a location outside the
8 geographic boundaries of the United States; Puerto Rico; the U.S. Virgin
9 Islands; and any territory, insular possession, or other location subject to the
10 jurisdiction of the United States.

11 ~~(12)~~(16) “Person” means an individual, corporation, business trust,
12 statutory trust, partnership, limited liability company, association, joint
13 venture, public corporation, government or governmental subdivision, agency,
14 or instrumentality, or any other legal or commercial entity.

15 ~~(13)~~(17) “Record” means information that is inscribed on a tangible
16 medium or that is stored in an electronic or other medium and is retrievable in
17 perceivable form.

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

1 of or otherwise disciplining a notary public and assuring the trustworthiness of
2 an individual holding a commission or special commission endorsement as
3 notary public;

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

6 (6) ~~prescribe standards for remote online notarization, including~~
7 ~~standards for credential analysis, the process through which a third person~~
8 ~~affirms the identity of an individual, the methods for communicating through a~~
9 ~~secure communication link, the means by which the remote notarization is~~
10 ~~certified, and the form of notice to be appended disclosing the fact that the~~
11 ~~notarization was completed remotely on any document acknowledged through~~
12 ~~remote online notarization~~ the means of performing a notarial act involving a
13 remotely located individual using communication technology;

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

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

18 (9) prescribe methods for a notary public to confirm, under subsections
19 5379(c) and (d) of this chapter, the identity of a tangible record.

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

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

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

13 * * *

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

17 § 5324. FEES

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

1 located individuals comply with the requirements of section 5380 of this
2 chapter and any rules adopted by the Office in accordance with section 5323 of
3 this chapter. A notary public shall apply for the special commission
4 endorsement for the performance of notarial acts on electronic records and for
5 remotely located individuals by filing with the Office an application provided
6 by the Office accompanied by the required fees and evidence of eligibility, as
7 required in rules adopted by the Office in accordance with section 5323 of this
8 chapter.

9 (e) A commission to act as a notary public authorizes the notary public to
10 perform notarial acts except for notarial acts on electronic records or for
11 remotely located individuals. A commission with a special endorsement issued
12 under subsection (d) of this section authorizes a notary public to perform
13 notarial acts on electronic records and for remotely located individuals. The
14 commission does not provide the notary public any immunity or benefit
15 conferred by law of this State on public officials or employees.

16 * * *

17 § 5362. AUTHORIZED NOTARIAL ACTS

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

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(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.]~~

* * *

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 * * *

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

7 State of _____

8 County of _____

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

10 _____

11 Dated _____

12 Signature of notarial officer _____

13 Stamp _____

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

15 * * *

16 § 5371. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL
17 ACT ON ELECTRONIC RECORD; SELECTION OF
18 TECHNOLOGY

19 (a) A notary public holding a special commission endorsement pursuant to
20 subsection 5341(d) of this title and who is thus authorized to perform notarial

1 acts on electronic records may select one or more tamper-evident technologies
2 to perform notarial acts with respect to electronic records ~~from the tamper-~~
3 ~~evident technologies approved by the Office by rule.~~ A person shall not
4 require a notary public to perform a notarial act with respect to an electronic
5 record with a technology that the notary public has not selected.

6 (b) ~~Before a notary public performs the notary public's initial notarial act~~
7 ~~with respect to an electronic record, the notary public shall notify the Office~~
8 ~~that the notary public will be performing notarial acts with respect to electronic~~
9 ~~records and identify the technology the notary public intends to use from the~~
10 ~~list of technologies approved by the Office by rule. If the Office has~~
11 ~~established standards by rule for approval of technology pursuant to section~~
12 ~~5323 of this chapter, the technology shall conform to the standards. If the~~
13 ~~technology conforms to the standards, the Office shall approve the use of the~~
14 ~~technology~~ A recorder, as defined in 27 V.S.A. § 618, may accept for
15 recording a tangible copy of an electronic record containing a notarial
16 certificate as satisfying any requirement that a record accepted for recording be
17 an original, if the notary public executing the notarial certificate certifies that
18 the tangible copy is an accurate copy of the electronic record.

19 * * *

20 § 5379. NOTARIAL ACT PERFORMED FOR REMOTELY LOCATED

1 INDIVIDUAL

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

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

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

9 (2) the notary public:

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

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

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

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

1 (4) the notary public, or a person acting on behalf of the notary public,
2 creates an audiovisual recording of the performance of the notarial act; and
3 (5) for a remotely located individual located outside the United States:
4 (A) the record:
5 (i) is to be filed with or relates to a matter before a public official
6 or court, governmental entity, or other entity subject to the jurisdiction of the
7 United States; or
8 (ii) involves property located in the territorial jurisdiction of the
9 United States or involves a transaction substantially connected with the United
10 States; and
11 (B) the act of making the statement or signing the record is not
12 prohibited by the foreign state in which the remotely located individual is
13 located.
14 (c) A notary public in this State may use communication technology under
15 subsection (b) of this section to take an acknowledgement of a signature on a
16 tangible record physically present before the notary public if the record is
17 displayed to and identified by the remotely located individual during the
18 audiovisual recording under subdivision (b)(4) of this section.

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

4 (1) the remotely located individual:

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

7 (i) the record; and

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

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

14 Signature of remotely located individual

15 _____

16 Printed name of remotely located

17 individual _____; and

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

20 (2) the notary public:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (k) A notary public, guardian, conservator, or agent of a notary public or a
2 personal representative of a deceased notary public shall retain the audiovisual
3 recording created under subdivision (b)(4) of this section or cause the
4 recording to be retained by a repository designated by or on behalf of the
5 person required to retain the recording. Unless a different period is required by
6 rules adopted under section 5323 of this chapter, the recording must be
7 retained for a period of at least 10 years after the recording is made.

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

17 § 5380. COMPUTER TECHNOLOGY AND IDENTITY PROOFING

18 PROVIDERS; MINIMUM STANDARDS

19 (a) Communication technology and identity proofing providers shall
20 develop, maintain, and implement processes and services that are consistent

1 with the requirements of this chapter and industry standards and best practices
2 for the process or service provided. Providers must also comply with all
3 applicable federal and State regulations, rules, and standards, including but not
4 limited to:

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

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

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

1 Sec. 5. EFFECTIVE DATE

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

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6 (Committee vote: _____)

7

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Representative _____

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FOR THE COMMITTEE