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House Committee on Commerce and Economic Development  
Vermont State House  
115 State Street  
Montpelier, VT 05633-5301

Honorable committee members:

I am a notary public and vice-chair of the Castleton Board of Civil Authority, so am interested in laws related to land records and notaries. I am writing as an individual. You may reproduce or post electronically my letter freely.

I have one substantial issue with the bill, noticed one typographical error and a few ways the bill could be better structured.

My substantial issue is that the present law allows a notary to use an expired ID for three years, and the bill would require that the ID be current. But the requirements for renewing ID are becoming ever more stringent. I have encountered many people as a notary or as an American Red Cross disaster responder who had expired ID and stated that they had attempted to renew their ID but encountered difficulties because of new requirements.

To overcome the difficulties the ID holders may need notarizations, for example, to obtain a birth certificate from a state that has such a requirement to obtain one. (It is not sufficient to only consider Vermont requirements for obtaining certificates since Vermont residents could have been born, married, or divorced anywhere.) If the legislature decides to depart from the three-year period suggested by the Uniform Law Commission, I believe some reasonable period should be adopted that will give ID holders sufficient time to resolve renewal issues, such as one year.

Turning to structural matters and typographical errors, the first issue is that in the existing law, all the allowed notarial acts are gathered in § 5304. DEFINITIONS (7) (a) (which is renumbered 12 in the bill), but in the bill, the new notarial act of certifying a tangible copy of an electronic record is placed many pages away, making it hard to find. Also, a notary who does not choose to perform remote notarizations but is skilled with computers may choose to perform this act, and it will be easier for such a notary to find the act if it is moved.

I suggest the following changes to the bill, with my suggested deletions in ~~red-strikeout~~ and additions in red. Bill language I suggest leaving unchanged is blue.

§ 5304. DEFINITIONS

As used in this chapter:

...

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

...

§ 5362. AUTHORIZED NOTARIAL ACTS

...

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

Typographical error:

§ 5343. RENEWALS; CONTINUING EDUCATION

...

(b)A notary public applying for renewal shall complete continuing education approved by the Office, which shall not be required to exceed two hours, during the preceding two-year period. A notary public electing to conduct remote notarizations pursuant to section 5379 of this title shall ~~compute-complete~~ a continuing education...

Section 5367. CERTIFICATE OF NOTARIAL ACT has been changed, requiring the notary to “indicate whether the notarial act was performed remotely pursuant to section 5379”. If the principal appears in the physical presence of the notary, it is not clear whether the notary must so state, or whether it is implied that the principal appeared physically unless communication technology is mentioned. The next section, 5368, changes the short form certificates to require a definite statement, one way or the other, about communications technology.

I believe many notaries who have no interest in remote notarization will not be following developments and will continue to use the older form of the certificates, which will result in many invalid notarizations. Also, the effective date of July 1, 2022, combined with the fact that continuing education rules for notaries have not yet been established by the Office of Professional Regulation, mean there is no official process to inform notaries of these changes in time for the effective date. I believe it would be better to reserve the existing certificates for physical presence notarizations and only add language in the case of remote notarizations. I suggest the following language:

#### § 5367. CERTIFICATE OF NOTARIAL ACT

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

- (1) be executed contemporaneously with the performance of the notarial act;
- (2) be signed and dated by the notary public and be signed in the same manner as on file with the Office;
- (3) identify the jurisdiction in which the notarial act is performed;

(4) ~~indicate whether if the notarial act was performed remotely pursuant to section 5379 of this title~~ the certificate shall state the principal appeared by means of communications technology;

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

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

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

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

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

(1) is in a short form as set forth in section 5368 of this chapter and includes or omits the phrase "by means of communications technology" as the case may be;

...

#### § 5368. SHORT-FORM CERTIFICATES

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

(1) For an acknowledgment in an individual capacity:

State of Vermont [County] of \_\_\_\_\_

This record was acknowledged before me [by means of communication technology] on \_\_\_\_\_ by \_\_\_\_\_

Date \_\_\_\_\_ Name(s) of individual(s) \_\_\_\_\_

Signature of notary public \_\_\_\_\_

Stamp \_\_\_\_\_ [ \_\_\_\_\_ ]

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

(2) For an acknowledgment in a representative capacity:

State of Vermont [County] of \_\_\_\_\_

This record was acknowledged before me **[by means of communication technology]** on \_\_\_\_\_ by \_\_\_\_\_ Date \_\_\_\_\_ Name(s) of individual(s) \_\_\_\_\_ as \_\_\_\_\_ (type of authority, such as officer or trustee) of \_\_\_\_\_ (name of party on behalf of whom record was executed).

Signature of notary public \_\_\_\_\_

Stamp [ \_\_\_\_\_ ]

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

(3) For a verification on oath or affirmation:

State of Vermont [County] of \_\_\_\_\_

Signed and sworn to (or affirmed) before me **[by means of communication technology]** on

\_\_\_\_\_ by \_\_\_\_\_

Date \_\_\_\_\_

Name(s) of individuals making statement \_\_\_\_\_

Signature of notary public \_\_\_\_\_

Stamp [ \_\_\_\_\_ ]

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

(4) For attesting a signature:

State of Vermont [County] of \_\_\_\_\_

Signed [or attested] before me [by means of communication technology] on \_\_\_\_\_ by

\_\_\_\_\_ Date

\_\_\_\_\_ Name(s) of individual(s) \_\_\_\_\_

Signature of notary public \_\_\_\_\_

Stamp [\_\_\_\_\_]

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

Section 5379 (e) addresses the sufficiency of a notarial certificate, which is also addressed by section 5367. Having two different sections addressing the same issue creates difficulty in interpretation so I suggest deleting that paragraph.

Section 5379 does not provide for the case of the notary relying on a credible witness to identify the principal, and the principal is physically present with the notary. I suggest the following language:

§ 5379. NOTARIAL ACT PERFORMED FOR A REMOTELY LOCATED

INDIVIDUAL

(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

(iii) the credible witness is physically present with the notary and has been identified in the manner set forth in § 5365 (b) (2).

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

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

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

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

Thank you for your attention to these matters,

Gerard Ashton