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STATE OF VERMONT

Legislative Committee on Administrative Rules (LCAR)

MEMO TO: Hon. Sarah Copeland Hanzas, Secretary of State
Emily Tredeau, Staff Attorney, Office of Professional Regulation
Gina Hruban, Administrative Services Coordinator, Office of Professional Regulation

CC: Sen. Hardy, Chair of the Senate Committee on Government Operations
Rep. McCarthy, Chair of the House Committee on Government Operations and Military Affairs
Louise Corliss, Administrative Services/APA Manager I, Vermont State Archives & Records Administration

FROM: Legislative Committee on Administrative Rules

DATE: October 31, 2024

SUBJECT: 24-E07, Emergency Administrative Rules for Notaries Public and Electronic and Remote Notarization

The Legislative Committee on Administrative Rules (LCAR) reviewed emergency rule 24-E07, Emergency Administrative Rules for Notaries Public and Electronic and Remote Notarization, at LCAR's September 19, 2024, meeting and voted 7–1 to neither approve nor object to the rule. LCAR based this vote, in part, on oral testimony from Emily Tredeau, Staff Attorney, Office of Professional Regulations, and written testimony from Sean Brown, Chair, Interagency Committee on Administrative Rules. *See* Memorandum from Sean Brown, August 26, 2024; [September 19, 2024, LCAR Meeting](#).

In 24-E07, the Office of Professional Regulation extends, until February 26, 2025, the Department's existing Emergency Administrative Rules for Notaries Public and Electronic and Remote Notarization, which were first adopted in March 2020 in response to the COVID-19 Pandemic. In 2022, the General Assembly authorized the Office of Professional Regulation to adopt permanent rules regarding electronic and remote notarial acts. *See* [2022 Acts and Resolves No. 171, Sec. 5](#). The Office of Professional Regulation filed its proposed permanent Administrative Rules for Notaries Public with the Secretary of State on September 18, 2024.

Pursuant to [3 V.S.A. § 844](#), emergency rules may be adopted when “an agency believes that there exists an imminent peril to public health, safety, or welfare.” Since the COVID-19 Pandemic ended, an imminent peril to public health, safety, and welfare necessary to justify the Emergency Administrative Rules for Notaries Public and Electronic and Remote Notarization

has not existed. LCAR is deeply concerned about the use of emergency rulemaking pursuant to [3 V.S.A. § 844](#) without specific prior authorization from the General Assembly when no such imminent threat exists. In addition, while it recognizes that the Office of Professional Regulation has limited resources and has experienced staffing challenges, LCAR is concerned that it took the Office of Professional Regulation more than two years to file proposed permanent rules regarding electronic and remote notarial acts after it had received legislative authorization to do so.

Because there is no “imminent peril to public health, safety, or welfare” that supports the adoption of the Emergency Administrative Rules for Notaries Public and Electronic and Remote Notarization, LCAR believes that the rule does not meet the requirements of [3 V.S.A. § 844](#). However, LCAR is choosing not to object to 24-E07 on this ground. Pursuant to the Administrative Procedure Act, LCAR’s decision not to object should not be considered “an implied legislative authorization of [the emergency rule’s] substantive or procedural lawfulness.” [3 V.S.A. § 844\(e\)\(2\)](#).