

2021 -- S 0931 SUBSTITUTE A

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LC002458/SUB A
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT

Introduced By: Senator John P. Burke

Date Introduced: May 25, 2021

Referred To: Senate Judiciary

(Secretary of State)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 42-30-5 of the General Laws in Chapter 42-30 entitled "Justices of
2 the Peace" is hereby amended to read as follows:

3 **42-30-5. Application for appointment.**

4 (a) Application. Any individual desiring to be appointed a justice of the peace shall make
5 written application to the governor over his or her own signature.

6 (b) Qualifications of applicants:

7 (1) The person qualified for a justice of the peace commission shall be at least eighteen
8 (18) years of age and reside legally ~~or conduct business on a regular basis~~ within Rhode Island; and

9 (2) The applicant for appointment to the office of justice of the peace can speak, read, and
10 write the English language and has sufficient knowledge of the powers and duties pertaining to that
11 office.

12 (c) ~~Attorneys and accountants. A member of the Rhode Island bar, and certified public~~
13 ~~accountants under § 5-3.1-5, shall, regardless of residence, be appointed a justice of the peace upon~~
14 ~~application and presentment of a certified copy of his or her certificate of admission to the bar or~~
15 ~~certificate of public accountancy.~~

16 (d) Any person making written application to be appointed a justice of the peace shall, at
17 the time of application, pay to the secretary of state the sum of eighty dollars (\$80.00).

18 SECTION 2. Sections 42-30.1-2, 42-30.1-3, 42-30.1-4, 42-30.1-5, 42-30.1-6 and 42-30.1-
19 12 of the General Laws in Chapter 42-30.1 entitled "Uniform Law on Notarial Acts" are hereby

1 amended to read as follows:

2 **42-30.1-2. Definitions.**

3 For purposes of this chapter, the following definitions apply:

4 (1) "Acknowledgment" means a declaration by an individual before a notarial officer that
5 the individual has signed a record for the purpose stated in the record and, if the record is signed in
6 a representative capacity, that the individual signed the record with proper authority and signed it
7 as the act of the individual or entity identified in the record.

8 (2) "Commissioning agency" means the Rhode Island office of the secretary of state.

9 (3) "Commissioning officer" means the governor of the state of Rhode Island.

10 (4) "Communication technology" means an electronic device or process that:

11 (i) Allows a notary public and a remotely located individual to communicate with each
12 other simultaneously by sight and sound; and

13 (ii) When necessary and consistent with other applicable law, facilitates communication
14 with a remotely located individual who has a vision, hearing, or speech impairment.

15 ~~(4)~~(5) "Electronic" means relating to technology having electrical, digital, magnetic,
16 wireless, optical, electromagnetic, or similar capabilities.

17 ~~(5)~~(6) "Electronic signature" means an electronic symbol, sound, or process attached to, or
18 logically associated with, a record and executed or adopted by an individual with the intent to sign
19 the record.

20 (7) "Foreign state" means a jurisdiction other than the United States, a state, territory, or a
21 federally recognized Indian tribe.

22 (8) "Identity proofing" means a process or service by which a third person provides a notary
23 public with a means to verify the identity of a remotely located individual by a review of personal
24 information from public or private data sources.

25 ~~(6)~~(9) "In a representative capacity" means acting as:

26 (i) An authorized officer, agent, partner, trustee, or other representative for a person other
27 than an individual;

28 (ii) A public officer, personal representative, guardian, or other representative, in the
29 capacity stated in a record;

30 (iii) An agent or attorney-in-fact for a principal; or

31 (iv) An authorized representative of another in any other capacity.

32 ~~(7)~~(10) "Notarial act" means an act, whether performed with respect to a tangible or
33 electronic record, that a notarial officer may perform under the law of this state. The term includes
34 taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or

1 affirmation, witnessing or attesting a signature, certifying or attesting a copy, noting a protest of a
2 negotiable instrument and transact, do and finish all matters and things relating to protests and
3 protesting bills of exchange and promissory notes, and all other matters within their office required
4 by law, take depositions as prescribed by law, and acknowledgments of deeds and other
5 instruments.

6 ~~(8)~~(11) "Notarial officer" means a notary public or other individual authorized to perform
7 a notarial act.

8 ~~(9)~~(12) "Notary public" means an individual commissioned to perform a notarial act by the
9 commissioning officer.

10 ~~(10)~~(13) "Official stamp" means a physical image affixed to a tangible record or an
11 electronic image attached to, or logically associated with, an electronic record.

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

15 ~~(11)~~(15) "Person" means an individual, corporation, business trust, statutory trust, estate,
16 trust, partnership, limited-liability company, association, joint venture, public corporation,
17 government or governmental subdivision, agency, or instrumentality, or any other legal or
18 commercial entity.

19 ~~(12)~~(16) "Record" means information that is inscribed on a tangible medium or that is
20 stored in an electronic or other medium and is retrievable in perceivable form.

21 (17) "Remotely located individual" means an individual who is not in the physical presence
22 of the notary public who performs a notarial act pursuant to § 42-30.1-10.

23 ~~(13)~~(18) "Sign" means, with present intent to authenticate or adopt a record:

24 (i) To execute or adopt a tangible symbol; or

25 (ii) To attach to, or logically associate with, the record an electronic symbol, sound, or
26 process.

27 ~~(14)~~(19) "Signature" means a tangible symbol or an electronic signature that evidences the
28 signing of a record.

29 ~~(15)~~(20) "Stamping device" means:

30 (i) A physical device capable of affixing an official stamp upon a tangible record; or

31 (ii) An electronic device or process capable of attaching to, or logically associating an
32 official stamp with, an electronic record.

33 ~~(16)~~(21) "State" means a state of the United States of America, the District of Columbia,
34 Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the

1 jurisdiction of the United States.

2 ~~(17)~~(22) "Verification on oath or affirmation" means a declaration that a statement in a
3 record is true, made by an individual under oath or by affirmation before a notarial officer.

4 **42-30.1-3. Authority to perform notarial act.**

5 (a) A notarial officer may perform a notarial act authorized by this chapter or by law of this
6 state other than this chapter.

7 (b) A notarial officer may not perform a notarial act with respect to a record to which the
8 officer or the officer's spouse, domestic partner, parent, guardian, child or sibling of the principal,
9 including in-law, step, or half relatives, is a party or in which either of them has a direct beneficial
10 interest, except where such persons witness a will or other legal document prepared by a notarial
11 officer who is an attorney licensed by the State of Rhode Island. A notarial act performed in
12 violation of this subsection is voidable.

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

15 **42-30.1-4. Requirements for certain notarial acts.**

16 (a) A notarial officer who takes an acknowledgment of a record shall determine, from
17 personal knowledge or satisfactory evidence of the identity of the individual, that the individual
18 appearing before the officer and making the acknowledgment has the identity claimed and that the
19 signature on the record is the signature of the individual.

20 (b) A notarial officer who takes a verification of a statement on oath or affirmation shall
21 determine, from personal knowledge or satisfactory evidence of the identity of the individual, that
22 the individual appearing before the notarial officer and making the verification has the identity
23 claimed and that the signature on the statement verified is the signature of the individual.

24 (c) A notarial officer who witnesses or attests to a signature shall determine, from personal
25 knowledge or satisfactory evidence of the identity of the individual, that the individual appearing
26 before the notarial officer and signing the record has the identity claimed.

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

30 (e) A notarial officer who makes or notes a protest of a negotiable instrument shall do so
31 in accordance with the requirements set forth in § 6A-3-505(b).

32 **42-30.1-5. Personal appearance required.**

33 If a notarial act relates to a statement made in, or a signature executed ~~upon,~~ on a record,
34 the individual making the statement or executing the signature shall appear personally before the

1 notarial officer. For purposes of this section, personal appearance means that the principal and the
2 notary public can communicate simultaneously by sight and sound through an electronic device or
3 process at the time of the notarization; or that the principal and notary public are physically close
4 enough to see, hear, and communicate with each other at the time of notarization.

5 **42-30.1-6. Identification of individual.**

6 (a) A notarial officer has personal knowledge of the identity of an individual appearing
7 before the notarial officer if the individual is personally known to the notarial officer through
8 dealings sufficient to provide reasonable certainty ~~regarding that the legal individual has the~~
9 identity ~~of the individual~~ claimed.

10 (b) A notarial officer has satisfactory evidence of the identity of an individual appearing
11 before the notarial officer if the notarial officer can identify the individual:

12 (1) By means of:

13 (i) A passport, driver's license, or government-issued, non-driver identification card, that
14 is current or expired not more than three (3) years before performance of the notarial act; or

15 (ii) Another form of government identification issued to an individual that is current or
16 expired not more than three (3) years before performance of the notarial act, contains the signature
17 or a photograph of the individual, and is satisfactory to the notarial officer; or

18 (2) By a verification on oath or affirmation of a credible witness personally appearing
19 before the notarial officer and known to the officer or whom the officer can identify on the basis of
20 a passport, driver's license, or government issued nondriver identification card, which is current or
21 expired not more than three (3) years before performance of the notarial act.

22 (c) A notarial officer may require an individual to provide additional information or
23 identification credentials necessary to assure the notarial officer of the identity of the individual.

24 **42-30.1-12. Foreign notarial act.**

25 (a) In this section, "foreign state" means a government other than the United States ~~of~~
26 ~~America or~~, a state, or federally recognized Indian tribe ~~not including the state of Rhode Island.~~

27 (b) If a notarial act is performed under authority and in the jurisdiction of a foreign state or
28 constituent unit of the foreign state, or is performed under the authority of a multinational or
29 international governmental organization, the act has the same effect under the law of this state as if
30 performed by a notarial officer of this state.

31 (c) If the title of office and indication of authority to perform notarial acts in a foreign state
32 appears in a digest of foreign law or in a list customarily used as a source for that information, the
33 authority of an officer with that title to perform notarial acts is conclusively established.

34 (d) The signature and official stamp of an individual holding an office described in

1 subsection (c) of this section are prima facie evidence that the signature is genuine and the
2 individual holds the designated title.

3 (e) An apostille in the form prescribed by the Hague Convention of October 5, 1961, and
4 issued by a foreign state party to the convention conclusively establishes that the signature of the
5 notarial officer is genuine and that the officer holds the indicated office.

6 ~~(e)~~(f) A consular authentication issued by an individual designated by the United States
7 Department of State as a notarizing officer for performing notarial acts overseas and attached to
8 the record with respect to which the notarial act is performed conclusively establishes that the
9 signature of the notarial officer is genuine and that the officer holds the indicated office.

10 SECTION 3. Chapter 42-30.1 of the General Laws entitled "Uniform Law on Notarial
11 Acts" is hereby amended by adding thereto the following sections:

12 **42-30.1-11.1. Notarial act under authority of federally recognized Indian tribe.**

13 (a) A notarial act performed under the authority and in the jurisdiction of a federally
14 recognized Indian tribe has the same effect as if performed by a notarial officer of this state, if the
15 act performed in the jurisdiction of the tribe is performed by:

- 16 (1) A notary public of the tribe;
17 (2) A judge, clerk, or deputy clerk of a court of the tribe; or
18 (3) Any other individual authorized by the law of the tribe to perform the notarial act.
19 (b) The signature and title of an individual performing a notarial act under the authority of
20 and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the
21 signature is genuine and that the individual holds the designated title.

22 (c) The signature and title of a notarial officer described in subsection (a)(1) or (a)(2) of
23 this section conclusively establishes the authority of the officer to perform the notarial act.

24 **42-30.1-12.1. Notarial act performed for remotely located individual.**

25 (a) A remotely located individual may comply with § 42-30.1-5 by using communication
26 technology to appear before a notary public.

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

- 29 (1) The notary public:
30 (i) Has personal knowledge under § 42-30.1-6(a) of the identity of the individual;
31 (ii) Has satisfactory evidence of the identity of the remotely located individual by oath or
32 affirmation from a credible witness appearing before the notary public under § 42-30.1-6(b); or
33 (iii) Has obtained satisfactory evidence of the identity of the remotely located individual
34 by using at least two (2) different types of identity proofing;

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

4 (3) The notary public, or a person acting on behalf of the notary public, creates an audio-
5 visual recording of the performance of the notarial act; and

6 (4) For a remotely located individual located outside the United States:

7 (i) The record:

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

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

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

14 (c) If a notarial act is performed under this section, the certificate of notarial act required
15 by § 42-30.1-12.2 and the short-form certificate provided in § 42-30.1-12.2 must indicate that the
16 notarial act was performed using communication technology.

17 (d) A short-form certificate provided in § 42-30.1-12.2(g) for a notarial act subject to this
18 section is sufficient if it:

19 (1) Complies with rules adopted under subsection (g)(1) of this section; or

20 (2) Is in the form provided in § 42-30.1-12.2(g) and contains a statement substantially as
21 follows: "This notarial act involved the use of communication technology."

22 (e) A notary public, a guardian, conservator, or agent of a notary public, or a personal
23 representative of a deceased notary public shall retain the audio-visual recording created under
24 subsection (b)(3) of this section, or cause the recording to be retained by a repository designated
25 by or on behalf of the person required to retain the recording. Unless a different period is required
26 by rule adopted under subsection (g)(4) of this section, the recording must be retained for a period
27 of at least ten (10) years after the recording is made.

28 (f) Before a notary public performs the notary public's initial notarial act under this section,
29 the notary public must notify the commissioning agency that the notary public will be performing
30 notarial acts with respect to remotely located individuals and identify the technologies the notary
31 public intends to use. If the commissioning agency has established standards under subsection (g)
32 of this section for approval of communication technology or identity proofing, the communication
33 technology and identity proofing must conform to the standards.

34 (g) The commissioning agency may adopt rules and regulations under this section

1 regarding performance of a notarial act. The rules may:

2 (1) Prescribe the means of performing a notarial act involving a remotely located individual

3 using communication technology;

4 (2) Establish standards for communication technology and identity proofing;

5 (3) Establish requirements or procedures to approve providers of communication

6 technology and the process of identity proofing; and

7 (4) Establish standards and a period for the retention of an audio-visual recording created

8 under subsection (b)(3) of this section.

9 (h) Before adopting, amending, or repealing a rule governing performance of a notarial act

10 with respect to a remotely located individual, the commissioning agency must consider:

11 (1) The most recent standards regarding the performance of a notarial act with respect to a

12 remotely located individual promulgated by national standard-setting organizations and the

13 recommendations of the National Association of Secretaries of State;

14 (2) Standards, practices, and customs of other jurisdictions that have laws substantially

15 similar to this section; and

16 (3) The views of governmental officials and entities and other interested persons.

17 (i) By allowing its communication technology or identity proofing to facilitate a notarial

18 act for a remotely located individual or by providing storage of the audio-visual recording created

19 under subsection (b)(3) of this section, the provider of the communication technology, identity

20 proofing, or storage appoints the commissioning agency as the provider's agent for service of

21 process in any civil action in this state related to the notarial act.

22 **42-30.1-12.2. Certificate of notarial act.**

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

24 (1) Be executed contemporaneously with the performance of the notarial act;

25 (2) Be signed and dated by the notarial officer and, if the notarial officer is a notary public,

26 be signed in the same manner as on file with the commissioning agency;

27 (3) Identify the jurisdiction in which the notarial act is performed;

28 (4) Contain the title of office of the notarial officer; and

29 (5) If the notarial officer is a notary public, indicate the date of expiration, if any, of the

30 officer's commission.

31 (b) If a notarial act regarding a tangible record is performed by a notary public, an official

32 stamp shall be affixed to the certificate. If a notarial act is performed regarding a tangible record

33 by a notarial officer other than a notary public and the certificate contains the information specified

34 in subsections (a)(2), (a)(3), and (a)(4) of this section, an official stamp may be affixed to the

1 certificate. If a notarial act regarding an electronic record is performed by a notarial officer and the
2 certificate contains the information specified in subsections (a)(2), (a)(3), and (a)(4) of this section,
3 an official stamp may be attached to or logically associated with the certificate.

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

6 (1) Is in a form otherwise permitted by the laws of this state;

7 (2) Is in a form permitted by the law applicable in the jurisdiction in which the notarial act
8 was performed; or

9 (3) Sets forth the actions of the notarial officer and the actions are sufficient to meet the
10 requirements of the notarial act as provided in §§ 42-30.1-4, 42-30.1-5, and 42-30.1-6 or any other
11 applicable laws of this state.

12 (d) By executing a certificate of a notarial act, a notarial officer certifies that the notarial
13 officer has complied with the requirements and made the determinations specified in §§ 42-30.1-3,
14 42-30.1-4, and 42-30.1-5.

15 (e) A notarial officer may not affix the notarial officer's signature to, or logically associate
16 it with, a certificate until the notarial act has been performed.

17 (f) If a notarial act is performed regarding a tangible record, a certificate must be part of,
18 or securely attached to, the record. If a notarial act is performed regarding an electronic record, the
19 certificate must be affixed to, or logically associated with, the electronic record.

20 (g) The commissioning agency shall develop short form certificates of notarial acts, if
21 completed with the information required by subsections (a), (b) and (c) of this section, for the
22 following purposes:

23 (1) An acknowledgment in an individual capacity;

24 (2) An acknowledgment in a representative capacity;

25 (3) A verification on oath or affirmation;

26 (4) Witnessing or attesting a signature;

27 (5) Certifying a copy of a record.

28 **42-30.1-13.1. Stamping Device.**

29 (a) A notary public is responsible for the security of the notary public's stamping device
30 and may not allow another individual to use the device to perform a notarial act. On the resignation
31 from, or the revocation or expiration of, the notary public's commission, or on the expiration of the
32 date set forth in the stamping device, if any, the notary public shall disable the stamping device by
33 destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it
34 unusable. On the death or adjudication of incompetency of a notary public, the notary public's

1 personal representative or guardian or any other person knowingly in possession of the stamping
2 device shall render it unusable by destroying, defacing, damaging, erasing, or securing it against
3 use in a manner that renders it unusable.

4 (b) If a notary public's stamping device is lost or stolen, the notary public or the notary
5 public's personal representative or guardian shall notify promptly the commissioning officer or
6 agency on discovering that the device is lost or stolen.

7 **42-30.1-19.1. Rules.**

8 (a) The commissioning agency may adopt rules and regulations to implement this chapter.
9 Rules and regulations adopted regarding the performance of notarial acts with respect to electronic
10 records may not require, or accord greater legal status or effect to, the implementation or application
11 of a specific technology or technical specification. The rules and regulations may:

12 (1) Prescribe the manner of performing notarial acts regarding tangible and electronic
13 records;

14 (2) Include provisions to ensure that any change to or tampering with a record bearing a
15 certificate of a notarial act is self-evident;

16 (3) Include provisions to ensure integrity in the creation, transmittal, storage, or
17 authentication of electronic records or signatures;

18 (4) Prescribe the process of granting, renewing, conditioning, denying, suspending, or
19 revoking a notary public commission and assuring the trustworthiness of an individual holding a
20 commission as notary public;

21 (5) Include provisions to prevent fraud or mistake in the performance of notarial acts;

22 (6) Provide for an evaluation tool for applicants to demonstrate sufficient knowledge of the
23 powers and duties of a notary commission.

24 (b) In adopting, amending, or repealing rules about notarial acts with respect to electronic
25 records, the commissioning agency shall consider, so far as is consistent with this chapter:

26 (1) The most recent standards regarding electronic records promulgated by national bodies,
27 such as the national association of secretaries of state;

28 (2) Standards, practices, and customs of other jurisdictions that substantially enact this
29 chapter; and

30 (3) The views of governmental officials and entities and other interested persons.

31 **42-30.1-20.1. Fees to perform notarial acts.**

32 (a) A notary public may charge a fee not to exceed five dollars (\$5.00) per document or
33 notarization; travel fees must be equal to or less than the then effective federal mileage rate as
34 issued by the internal revenue service. All fees must be posted in a conspicuous place in the notary's

1 place of business or upon request, fees must be disclosed to any person utilizing the services of the
2 notary.

3 (b) A notary public may charge a fee not to exceed twenty-five dollars (\$25.00) per
4 document or notarization for remote online notarizations. All fees must be posted in a conspicuous
5 place in the notary's place of business or upon request, fees must be disclosed to any person utilizing
6 the services of the notary.

7 **42-30.1-24.1. Uniformity of application and construction.**

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

10 SECTION 4. This act shall take effect upon passage.

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LC002458/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO STATE AFFAIRS AND GOVERNMENT

1 This act would provide amendments to the notary public laws to permit remote
2 notarization, would recognize notarizations performed under the authority and in the jurisdiction
3 of a federally recognized Indian tribe, prohibit notary fees in excess of five dollars (\$5.00), prohibit
4 remote online notary fees in excess of twenty-five dollars (\$25.00) and requires the disabling of
5 notary stamping device upon expiration or revocation of a notary commission.

6 This act would take effect upon passage.

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