

Let's discuss the tomorrow morning at 10:30

Donna Sweaney, Representative, Windsor 1
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On Mar 23, 2016, at 5:36 PM, Elizabeth Novotny <enovotny.vt@gmail.com>
wrote:

BetsyAnn,

No word back yet from most folks. Not surprising given everyone's schedules. So in the interest of meeting your needs, please see below a copy of the latest draft, which includes edits (in red) from Teri Corsones:

[Teri Corsones/EN Suggested legislative definition of "Official Duties" for insertion in H. 206 DEFINITION Section](#)

A person is acting in the scope of his or her official duties if he or she notarizes a document that he or she believes is related to the execution of their duties and responsibilities of employment or is the type of document that other employees notarize in the course of employment, or is:

1. useful or of assistance to any person or entity identified in § 5205 (2); or,
2. required, requested, created, used, submitted, or relied upon, by any person or entity identified in § 5205 (2); or,
3. necessary in order assist in the representation, care or protection of a person or the state; or,
4. necessary in order to protect the public or property; or,
5. necessary to represent or assist crime victims in receiving restitution or other services; or
6. relates to a Vermont or federal court rule or statute governing any criminal, post conviction, mental health, family, juvenile, **civil, probate, Judicial Bureau, Environmental Division, Supreme Court matter**; or,
7. relates to a matter subject to Vermont Statutes Titles 4,12,13,15, 33, 18, 20, and 23.

I realize its cumbersome but it's hard to draft a definition of "official duties" when I suspect no policy or job description speaks to notarization, let alone a list of what employees may notarize in their official capacity. It hasn't been necessary until this bill which imposes two different standards depending upon whether a person notarizes a neighbor's mortgage or the neighbor's affidavit for a Relief from Abuse Order. We can improve it in the Senate if needed. This draft is at least a start. Whether it draws the attention of the Judiciary Committee is an unknown.

I sent my edits to section 5205 (A) (see bold text) in a separate email but reprint them below for easy reading. I carved out 5241 (b) (4) and (5) because they don't apply to this group--disqualification under 5242 and the examination.

Proposed edits to 5205 (A):

§ 5205. EXEMPTIONS

(a) Generally.

(1) The persons set forth in subdivision (2) of this subsection, when acting within the scope of their official duties, are exempt from all of the requirements of this chapter, except for the requirements:

(A) to apply for a commission set forth in section 5241 (a), (b) (1) - (3), (c), (d) and (e) of this chapter; and

(B) unless exempted under subsection (c) of this section, to pay the fee set forth in section 5225 of this chapter:

(2)(A) Persons employed by the Judiciary, including judges, Superior Court clerks, court operations managers, Probate registers, case managers, docket clerks, and after-hours relief from abuse contract employees.

(B) Persons employed as law enforcement officers certified under 20 V.S.A. chapter 151; who are noncertified constables; or who are employed by a Vermont law enforcement agency, the Departments of Public Safety, of Fish and Wildlife, of Motor Vehicles, of Liquor Control, or for Children and Families, the Office of the Defender General, the Office of the Attorney General, or a State's Attorney or Sheriff.

(b) Attorneys. Attorneys licensed and in good standing in this State are exempt from:

(1) the examination requirement set forth in subsection 5241(b) of this chapter; and

(2) the continuing education requirement set forth in section 5243 of this chapter.

(c) Fees. The following persons are exempt from the fee set forth in section 5225 of this chapter:

(1) a judge, clerk, or other court staff, as designated by the Court Administrator;

(2) State's Attorneys and their deputies;

(3) justices of the peace and town clerks and their assistants; and

(4) State Police officers, municipal police officers, fish and game wardens, sheriffs and deputy sheriffs, motor vehicle inspectors, employees of the Department of Corrections, and employees of the Department for Children and Families.

Please let me know if you need anything more from me.

Elizabeth Novotny
Lobbyist, Vermont Police Association

On Wed, Mar 23, 2016 at 3:41 PM, Elizabeth Novotny
<enovotny.vt@gmail.com> wrote:

I have a draft definition and sent it to the parties for review and input. I am waiting for those very busy people to check their emails and get back to me.

Elizabeth Novotny
Lobbyist, Vermont Police Association

On Wed, Mar 23, 2016 at 12:25 PM, Elizabeth Novotny
<enovotny.vt@gmail.com> wrote:

Thank you so much BetsyAnn.

here are my edits. First, I edited the 5241(application) requirements since they do not need to take the exam etc.

Second, I inserted a comment--I think we should add "official duties" to the definition section of the bill and I will try to draft one that works. Thoughts?

Elizabeth Novotny
Lobbyist, Vermont Police Association

On Tue, Mar 22, 2016 at 5:34 PM, BetsyAnn Wrask
<BWrask@leg.state.vt.us> wrote:

Hi Beth and Chris,

Chris, as an update, as I understand it, HGO would like to exempt the Court-affiliated and the LEO-affiliated persons from all of the requirements of the chapter, except the requirements to apply for the commission and, unless they're otherwise exempted, the fee.

This overall exemption applies when they're "acting within the scope of their official duties," although Beth is going to consider language that would more specifically address this. I think the point is that HGO doesn't want an off-duty LEO/Court staffer to ignore notary requirements (ex: journal, stamp, etc.) if s/he is doing a personal favor to notarize a doc for a friend, for example. However, unless there's a good way to drill down into what "official duties" might mean, it seems that the on-duty LEO/Court staffer would not have to comply with standard notary requirements if a member of the public comes to the police station/courthouse and asks for a document to be notarized.

Attached please find a draft amendment that attempts to address these issues. The substantive changes are in subsection (a); I only made stylistic changes to (b) and (c).

A few notes:

- Pg. 1, lines 11-14: They'd still have to apply for a commission and *unless they're exempted under (c)*, they'd still have to pay the fee. (Please see more on the fee issue below.)
- Pg. 1, lines 19-20: I switched up the punctuation to try to make it clearer that it applies to employees of the specified State departments.

- Pg. 2, subsection (c): Are the fee exemptions as intended? Please compare to (a)(1)(B) and (a)(2). Note that not everyone listed in (a)(2) – such as persons employed by a law enforcement agency or by the AG or Defender General – would be exempt from the fee under subsection (c). As written, if they’re not listed in (c), they’re paying a fee. Beth’s original language provided that nothing in the overall exemption is intended to exempt payment of a fee that may be otherwise required, and today the committee discussed exemptions from the fee “as applicable.”

If the intent, on the other hand, is to say everyone referenced in (a)(2) doesn’t have to pay the fee, (a)(1) should be revised and subsection (c) will just be about exempting the town officers currently listed in (c)(3).

Once you have had a chance to review, please let me know if you have any suggested revisions.

Thanks,

Betsy

BetsyAnn Wrask, Legislative Counsel

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