

1 **REPEAL OF UTAH DIGITAL SIGNATURE**

2 **ACT**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lyle W. Hillyard**

6 House Sponsor: Douglas C. Aagard

7 Cosponsors: Brent H. Goodfellow Parley G. Hellewell

8

LONG TITLE

9 **General Description:**

10 This bill modifies the Notarization and Authentication of Documents and Digital
11 Signatures Title by repealing the Utah Digital Signatures Act.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ repeals the Utah Digital Signatures Act and makes conforming amendments;
- 15 ▶ modifies definitions;
- 16 ▶ removes references to acknowledgments using digital signatures under the Utah
17 Digital Signatures Act; and
- 18 ▶ makes technical changes.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **16-6a-118**, as enacted by Chapter 300, Laws of Utah 2000

26 **46-1-2**, as last amended by Chapter 312, Laws of Utah 2000



- 28 **46-1-6**, as last amended by Chapter 312, Laws of Utah 2000
- 29 **46-1-14**, as last amended by Chapter 312, Laws of Utah 2000
- 30 **46-1-16**, as last amended by Chapter 211, Laws of Utah 2003
- 31 **46-4-205**, as enacted by Chapter 74, Laws of Utah 2000
- 32 **48-2c-102**, as last amended by Chapter 141, Laws of Utah 2005
- 33 **53-7-107**, as enacted by Chapter 86, Laws of Utah 2000
- 34 **58-37-6**, as last amended by Chapter 248, Laws of Utah 2005
- 35 **63F-1-206**, as enacted by Chapter 169, Laws of Utah 2005
- 36 **76-6-1102**, as last amended by Chapter 101, Laws of Utah 2005
- 37 **78-7-34**, as enacted by Chapter 86, Laws of Utah 2000

38 REPEALS:

- 39 **46-3-101**, as enacted by Chapter 61, Laws of Utah 1995
- 40 **46-3-102**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 41 **46-3-103**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 42 **46-3-104**, as last amended by Chapter 11, Laws of Utah 2000
- 43 **46-3-201**, as last amended by Chapter 205, Laws of Utah 1996
- 44 **46-3-202**, as last amended by Chapter 11, Laws of Utah 2000
- 45 **46-3-203**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 46 **46-3-204**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 47 **46-3-301**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 48 **46-3-302**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 49 **46-3-303**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 50 **46-3-304**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 51 **46-3-305**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 52 **46-3-306**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 53 **46-3-307**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 54 **46-3-308**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 55 **46-3-309**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 56 **46-3-310**, as enacted by Chapter 205, Laws of Utah 1996
- 57 **46-3-401**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 58 **46-3-402**, as repealed and reenacted by Chapter 205, Laws of Utah 1996

- 59 **46-3-403**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 60 **46-3-404**, as enacted by Chapter 205, Laws of Utah 1996
- 61 **46-3-405**, as enacted by Chapter 205, Laws of Utah 1996
- 62 **46-3-406**, as enacted by Chapter 205, Laws of Utah 1996
- 63 **46-3-501**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 64 **46-3-502**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
- 65 **46-3-504**, as enacted by Chapter 61, Laws of Utah 1995
- 66 **46-3-601**, as last amended by Chapter 169, Laws of Utah 2005
- 67 **46-3-602**, as last amended by Chapter 169, Laws of Utah 2005

69 *Be it enacted by the Legislature of the state of Utah:*

70 Section 1. Section **16-6a-118** is amended to read:

71 **16-6a-118. Electronic documents.**

72 (1) Notwithstanding the other requirements of this chapter except subject to Section
73 16-6a-106, the division may by rule permit a writing required or permitted to be filed with the
74 division under this chapter:

75 (a) to be delivered, mailed, or filed:

76 (i) in an electronic medium; or

77 (ii) by electronic transmission; or

78 (b) to be signed by photographic, electronic, or other means prescribed by rule, except
79 that a writing signed in an electronic medium shall be signed by [~~digital~~] electronic signature in
80 accordance with Title 46, Chapter [~~3, Utah Digital Signature Act~~] 4, Uniform Electronic
81 Transactions Act.

82 (2) The division may by rule provide for any writing required or permitted to be
83 prepared, delivered, or mailed by the division under this chapter to be prepared, delivered, or
84 mailed:

85 (a) in an electronic medium; or

86 (b) by electronic transmission.

87 Section 2. Section **46-1-2** is amended to read:

88 **TITLE 46. NOTARIZATION AND AUTHENTICATION OF**
89 **DOCUMENTS AND ELECTRONIC SIGNATURES**

90 **46-1-2. Definitions.**

91 As used in this chapter:

92 (1) "Acknowledgment" means a notarial act in which a notary certifies that a signer[;
93 ~~whose identity is personally known to the notary or proven on the basis of satisfactory~~
94 ~~evidence,] has admitted, [and which admission is made either in the presence of the notary or~~
95 ~~by an electronic communication that is as reliable as an admission made] in the presence of the~~
96 notary, [~~provided that the electronic communication is authorized by law or rule,] to signing a
97 document voluntarily for its stated purpose.~~

98 (2) "Commission" means to empower to perform notarial acts and the written authority
99 to perform those acts.

100 (3) "Copy certification" means a notarial act in which a notary certifies that a
101 photocopy is an accurate copy of a document that is neither a public record nor publicly
102 recorded.

103 (4) "Electronic signature" has the same meaning as provided under Section 46-4-102.

104 [~~(4)~~ (5)] "Jurat" means a notarial act in which a notary certifies that a signer, whose
105 identity is personally known to the notary or proven on the basis of satisfactory evidence, has
106 made, in the notary's presence, a voluntary signature and taken an oath or affirmation vouching
107 for the truthfulness of the signed document.

108 [~~(5)~~ (6)] "Notarial act" and "notarization" mean any act that a notary is empowered to
109 perform under this section.

110 [~~(6)~~ (7)] "Notarial certificate" means the part of or attachment to a notarized document
111 for completion by the notary and bearing the notary's signature and seal.

112 [~~(7)~~ (8)] "Notary" means any person commissioned to perform notarial acts under this
113 chapter.

114 [~~(8)~~ (9)] "Oath" or "affirmation" means a notarial act in which a notary certifies that a
115 person made a vow or affirmation in the presence of the notary on penalty of perjury.

116 [~~(9)~~ (10)] "Official misconduct" means a notary's performance of any act prohibited or
117 failure to perform any act mandated by this chapter or by any other law in connection with a
118 notarial act.

119 [~~(10)~~ (11)] "Personal knowledge of identity" means familiarity with an individual
120 resulting from interactions with that individual over a period of time sufficient to eliminate

121 every reasonable doubt that the individual has the identity claimed.

122 ~~[(H)]~~ (12) "Satisfactory evidence of identity" means identification of an individual
123 based on:

124 (a) a current document issued by a federal or state government with the individual's
125 photograph, signature, and physical description; or

126 (b) the oath or affirmation of a credible person who is personally known to the notary
127 and who personally knows the individual~~;~~or.

128 ~~[(c) by electronic protocols as reliable as those set forth in Subsections (11)(a) or (b)
129 and established by law or rule.]~~

130 Section 3. Section **46-1-6** is amended to read:

131 **46-1-6. Powers and limitations.**

132 The following notarial acts may be performed by a notary within the state:

133 (1) acknowledgments;

134 (2) copy certifications;

135 (3) jurats; and

136 (4) oaths or affirmations.

137 ~~[(1) Acknowledgments , including authentication of an electronic or digital signature
138 upon the personal knowledge or satisfactory evidence of the identity of the signer.]~~

139 ~~[(a) An electronic or digital signature that is authenticated pursuant to this Subsection
140 (1) shall be considered an authenticated electronic or digital signature.]~~

141 ~~[(b) If all parties to a document consent, an authenticated electronic or digital
142 signature may be treated as a notarized signature on the document, unless otherwise provided
143 by law or rule.]~~

144 ~~[(c) A commissioned Notary Public acting under the supervision and control of a
145 licensed certification authority who acknowledges and authenticates electronic or digital
146 signatures pursuant to this Subsection (1) is protected under Title 46, Chapter 3, Utah Digital
147 Signature Act.]~~

148 ~~[(2) Copy certifications:]~~

149 ~~[(3) Jurats:]~~

150 ~~[(4) Oaths or affirmations:]~~

151 Section 4. Section **46-1-14** is amended to read:

152 **46-1-14. Entries in journal.**

153 (1) For every notarial act, the notary may record the following information in the
154 journal at the time of notarization [~~the following information including~~]:

- 155 (a) the date and time of day of the notarial act;
- 156 (b) the type of notarial act;
- 157 (c) a description of the document or proceeding;
- 158 (d) the signature and printed name and address of each person for whom a notarial act
159 is performed;

160 (e) the evidence of identity of each person for whom a notarial act is performed, in the
161 form of [~~either~~]:

- 162 (i) a statement that the person is "personally known" to the notary; [~~or~~
- 163 (ii) a description of the identification document, its issuing agency, its serial or
164 identification number, and its date of issuance or expiration; [~~and~~] or
- 165 (iii) the signature and printed name and address of a credible witness swearing or
166 affirming to the person's identity; and
- 167 (f) the fee, if any, charged for the notarial act.

168 (2) A notary may record in the journal the circumstances in refusing to perform or
169 complete a notarial act.

170 [~~(3) If a notarization is performed electronically, the notary may keep an electronic
171 journal in which to record the information described in Subsections (1) and (2). All electronic
172 notarizations shall be evidenced by a digital signature.]~~

173 Section 5. Section **46-1-16** is amended to read:

174 **46-1-16. Official signature -- Official seal -- Seal impression.**

175 (1) In completing a notarial act, a notary shall sign on the notarial certificate exactly
176 and only the name indicated on the notary's commission.

177 (2) (a) A notary shall keep an official notarial seal that is the exclusive property of the
178 notary and that may not be used by any other person. Upon the resignation, revocation, or
179 expiration of a notarial commission, the seal shall be destroyed.

180 (b) Each notarial seal obtained by a notary on or after July 1, 2003 shall use purple ink.

181 (3) A new seal shall be obtained for any new commission or recommission. A new
182 seal shall be obtained if the notary changes the notary's name or address of record at any time

183 during the notary's four-year commission. The seal impression shall be affixed near the notary's
184 official signature on a notarial certificate and shall include a sharp, legible, and
185 photographically reproducible ink impression of the notarial seal that consists of:

- 186 (a) the notary public's name exactly as indicated on the commission;
- 187 (b) the words "notary public," "state of Utah," and "my commission expires
188 (commission expiration date)";
- 189 (c) the address of the notary's business or residence;
- 190 (d) a facsimile of the great seal of the state [~~of Utah~~]; and
- 191 (e) a rectangular border no larger than one inch by two and one-half inches surrounding
192 the required words and seal.

193 (4) An embossed seal impression that is not photographically reproducible may be used
194 in addition to, but not in place of, the photographically reproducible seal required in this
195 section.

196 (5) The notarial seal shall be affixed in a manner that does not obscure or render
197 illegible any information or signatures contained in the document or in the notarial certificate.

198 (6) A notary acknowledgment on an annexation, subdivision, or other transparent map
199 or plat is considered complete without the imprint of the notary's official seal if:

- 200 (a) the notary signs the acknowledgment in permanent ink; and
- 201 (b) the following appear below or immediately adjacent to the notary's signature:
 - 202 (i) the notary's full name;
 - 203 (ii) the words "A notary public commissioned in Utah"; and
 - 204 (iii) the expiration date of the notary's commission.

205 (7) A notary acknowledgment on an electronic message or document is considered
206 complete without the imprint of the notary's seal if [~~:(a) the electronic message or document
207 has been digitally signed pursuant to Section 46-3-401 in the presence of a notary; (b) the
208 notary has confirmed that the digital signature on the electronic message or document is
209 verifiable by the public key listed in the certificate issued to the signer in accordance with
210 Section 46-3-403; (c) the notary electronically signs the acknowledgment with a digital
211 signature pursuant to Section 46-3-401; and (d)] the following information appears
212 electronically within the message [~~digitally signed by the notary~~]:~~

213 [(i)] (a) the notary's full name and commission number exactly as indicated on their

214 commission; [~~and~~]

215 [(ii)] (b) the words "notary public," "state of Utah," and "my commission expires
216 on _____ (date)"; and

217 [(iii)] (c) the address of the notary's business or residence exactly as indicated on their
218 commission.

219 Section 6. Section **46-4-205** is amended to read:

220 **46-4-205. Notarization and acknowledgment.**

221 (1) If a law requires a signature or record to be notarized, acknowledged, verified, or
222 made under oath, the requirement is satisfied by following the procedures and requirements of
223 Subsection 46-1-16(7).

224 (2) The electronic signature of the person authorized to perform the acts under
225 Subsection (1), and all other information required to be included by other applicable law, shall
226 be attached to or logically associated with the signature or record.

227 Section 7. Section **48-2c-102** is amended to read:

228 **48-2c-102. Definitions.**

229 As used in this chapter:

230 (1) "Bankruptcy" includes bankruptcy under federal bankruptcy law or under Utah
231 insolvency law.

232 (2) "Business" includes any lawful trade, occupation, profession, business, investment,
233 or other purpose or activity, whether or not that trade, occupation, profession, business,
234 investment, purpose, or activity is carried on for profit.

235 (3) "Capital account," unless otherwise provided in the operating agreement, means the
236 account, as adjusted from time to time, maintained by the company for each member to reflect:

- 237 (a) the value of all contributions by that member;
- 238 (b) the amount of all distributions to that member or the member's assignee;
- 239 (c) the member's share of profits, gains, and losses of the company; and
- 240 (d) the member's share of the net assets of the company upon dissolution and winding
241 up that are distributable to the member or the member's assignee.

242 (4) "Company," "limited liability company," or "domestic company" means a limited
243 liability company organized under or subject to this chapter.

244 (5) "Designated office" means the street address in this state where the records required

245 to be maintained by Section 48-2c-112 are kept.

246 (6) (a) "Distribution" means a direct or indirect transfer by a company of money or
247 other property, except:

248 (i) an interest in the company; or

249 (ii) incurrence of indebtedness by a company, to or for the benefit of members in the
250 company in respect of any interest in the company.

251 (b) "Distribution" does not include amounts constituting reasonable compensation for
252 present or past services or reasonable payments made in the ordinary course of business
253 pursuant to a bona fide retirement plan or other benefits program.

254 (7) "Division" means the Division of Corporations and Commercial Code of the Utah
255 Department of Commerce.

256 (8) "Entity" includes:

257 (a) a domestic or foreign corporation;

258 (b) a domestic or foreign nonprofit corporation;

259 (c) a company or foreign company;

260 (d) a profit or nonprofit unincorporated association;

261 (e) a business trust;

262 (f) an estate;

263 (g) a general partnership or a domestic or foreign limited partnership;

264 (h) a trust;

265 (i) a state;

266 (j) the United States; or

267 (k) a foreign government.

268 (9) (a) "Filed with the division" means that a statement, document, or report:

269 (i) complies with the requirements of Section 48-2c-207; and

270 (ii) has been accepted for filing by the division.

271 (b) "Filed with the division" includes filing by electronic means approved by the
272 division.

273 (10) "Foreign company" means a limited liability company organized under a law other
274 than the laws of this state.

275 (11) "Interest in the company" means a member's economic rights in the company

276 including:

277 (a) the right to receive distributions from the company; and

278 (b) the right to receive a portion of the net assets of the company upon dissolution and
279 winding up of the company.

280 (12) "Manager" means a person elected or otherwise designated by the members to
281 manage a manager-managed company pursuant to Part 8, Management.

282 (13) "Manager-managed company" means a company whose management is vested in
283 managers pursuant to Part 8, Management.

284 (14) "Member" means a person with an ownership interest in a company and with the
285 rights and obligations specified under this chapter.

286 (15) "Member-managed company" means a company whose management is vested in
287 its members pursuant to Part 8, Management.

288 (16) (a) "Operating agreement" means any written agreement of the members:

289 (i) concerning the business or purpose of the company and the conduct of its affairs;
290 and

291 (ii) which complies with Part 5, Operating Agreements.

292 (b) "Operating agreement" includes any written amendments agreed to by all members
293 or other writing adopted in any other manner as may be provided in the operating agreement.

294 (17) "Person" means an individual or entity.

295 (18) "Proceeding" means any administrative, judicial or other trial, hearing, or other
296 action, whether civil, criminal, or investigative, the result of which may be that a court,
297 arbitrator, or governmental agency may enter a judgment, order, decree, or other determination
298 which, if not appealed or reversed, would be binding upon any person subject to the
299 jurisdiction of that court, arbitrator, or governmental agency.

300 (19) "Professional services" is as defined in Part 15, Professions.

301 (20) "Profits interest" means that portion of the company's profits to be allocated to an
302 individual member upon any allocation of profits.

303 (21) "Profits interests" or "interests in profits" with respect to a company means the
304 total interests of all of the company's members in the company's profits.

305 (22) "Signed," "signs," or "signature" means:

306 (a) a manual signature or authorized facsimile of the signature [~~and~~]; or

307 (b) any electronic [~~or digital~~] signature approved by the division.

308 (23) "State" means:

309 (a) a state, territory, or possession of the United States;

310 (b) the District of Columbia; or

311 (c) the Commonwealth of Puerto Rico.

312 Section 8. Section **53-7-107** is amended to read:

313 **53-7-107. Electronic writing.**

314 (1) Any writing required or permitted by this chapter may be filed or prepared in an
315 electronic medium and by electronic transmission subject to the ability of the recipient to
316 accept and process the electronic writing.

317 (2) Any writing required by this chapter to be signed that is in an electronic medium
318 shall be signed by [~~digital~~] electronic signature in accordance with Title 46, Chapter [~~3, Utah~~
319 ~~Digital Signature Act~~] 4, Uniform Electronic Transactions Act.

320 Section 9. Section **58-37-6** is amended to read:

321 **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**
322 **conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records**
323 **required -- Prescriptions.**

324 (1) (a) The division may adopt rules relating to the licensing and control of the
325 manufacture, distribution, production, prescription, administration, dispensing, conducting of
326 research with, and performing of laboratory analysis upon controlled substances within this
327 state.

328 (b) The division may assess reasonable fees to defray the cost of issuing original and
329 renewal licenses under this chapter pursuant to Section 63-38-3.2.

330 (2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses,
331 administers, conducts research with, or performs laboratory analysis upon any controlled
332 substance in Schedules II through V within this state, or who proposes to engage in
333 manufacturing, producing, distributing, prescribing, dispensing, administering, conducting
334 research with, or performing laboratory analysis upon controlled substances included in
335 Schedules II through V within this state shall obtain a license issued by the division.

336 (ii) The division shall issue each license under this chapter in accordance with a
337 two-year renewal cycle established by rule. The division may by rule extend or shorten a

338 renewal period by as much as one year to stagger the renewal cycles it administers.

339 (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense,
340 administer, conduct research with, or perform laboratory analysis upon controlled substances in
341 Schedules II through V within this state may possess, manufacture, produce, distribute,
342 prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon
343 those substances to the extent authorized by their license and in conformity with this chapter.

344 (c) The following persons are not required to obtain a license and may lawfully possess
345 controlled substances under this section:

346 (i) an agent or employee, except a sales representative, of any registered manufacturer,
347 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the
348 usual course of his business or employment; however, nothing in this subsection shall be
349 interpreted to permit an agent, employee, sales representative, or detail man to maintain an
350 inventory of controlled substances separate from the location of his employer's registered and
351 licensed place of business;

352 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or
353 warehouseman, who possesses any controlled substance in the usual course of his business or
354 employment; and

355 (iii) an ultimate user, or any person who possesses any controlled substance pursuant to
356 a lawful order of a practitioner.

357 (d) The division may enact rules waiving the license requirement for certain
358 manufacturers, producers, distributors, prescribers, dispensers, administrators, research
359 practitioners, or laboratories performing analysis if consistent with the public health and safety.

360 (e) A separate license is required at each principal place of business or professional
361 practice where the applicant manufactures, produces, distributes, dispenses, conducts research
362 with, or performs laboratory analysis upon controlled substances.

363 (f) The division may enact rules providing for the inspection of a licensee or applicant's
364 establishment, and may inspect the establishment according to those rules.

365 (3) (a) Upon proper application, the division shall license a qualified applicant to
366 manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon
367 controlled substances included in Schedules I through V, unless it determines that issuance of a
368 license is inconsistent with the public interest. The division shall not issue a license to any

369 person to prescribe, dispense, or administer a Schedule I controlled substance. In determining
370 public interest, the division shall consider whether or not the applicant has:

371 (i) maintained effective controls against diversion of controlled substances and any
372 Schedule I or II substance compounded from any controlled substance into other than

373 legitimate medical, scientific, or industrial channels;

374 (ii) complied with applicable state and local law;

375 (iii) been convicted under federal or state laws relating to the manufacture, distribution,
376 or dispensing of substances;

377 (iv) past experience in the manufacture of controlled dangerous substances;

378 (v) established effective controls against diversion; and

379 (vi) complied with any other factors that the division establishes that promote the
380 public health and safety.

381 (b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture,
382 produce, distribute, conduct research with, or perform laboratory analysis upon controlled
383 substances in Schedule I other than those specified in the license.

384 (c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with
385 substances in Schedules II through V if they are authorized to administer, dispense, or conduct
386 research under the laws of this state.

387 (ii) The division need not require a separate license for practitioners engaging in
388 research with nonnarcotic controlled substances in Schedules II through V where the licensee is
389 already licensed under this act in another capacity.

390 (iii) With respect to research involving narcotic substances in Schedules II through V,
391 or where the division by rule requires a separate license for research of nonnarcotic substances
392 in Schedules II through V, a practitioner shall apply to the division prior to conducting
393 research.

394 (iv) Licensing for purposes of bona fide research with controlled substances by a
395 practitioner considered qualified may be denied only on a ground specified in Subsection (4),
396 or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard
397 adequately his supply of substances against diversion from medical or scientific use.

398 (v) Practitioners registered under federal law to conduct research in Schedule I
399 substances may conduct research in Schedule I substances within this state upon furnishing the

400 division evidence of federal registration.

401 (d) Compliance by manufacturers, producers, and distributors with the provisions of
402 federal law respecting registration, excluding fees, entitles them to be licensed under this
403 chapter.

404 (e) The division shall initially license those persons who own or operate an
405 establishment engaged in the manufacture, production, distribution, dispensation, or
406 administration of controlled substances prior to April 3, 1980, and who are licensed by the
407 state.

408 (4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed
409 on probation, or revoked by the division upon finding that the applicant or licensee has:

410 (i) materially falsified any application filed or required pursuant to this chapter;

411 (ii) been convicted of an offense under this chapter or any law of the United States, or
412 any state, relating to any substance defined as a controlled substance;

413 (iii) been convicted of a felony under any other law of the United States or any state
414 within five years of the date of the issuance of the license;

415 (iv) had a federal license denied, suspended, or revoked by competent federal authority
416 and is no longer authorized to engage in the manufacturing, distribution, or dispensing of
417 controlled substances;

418 (v) had his license suspended or revoked by competent authority of another state for
419 violation of laws or regulations comparable to those of this state relating to the manufacture,
420 distribution, or dispensing of controlled substances;

421 (vi) violated any division rule that reflects adversely on the licensee's reliability and
422 integrity with respect to controlled substances;

423 (vii) refused inspection of records required to be maintained under this chapter by a
424 person authorized to inspect them; or

425 (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the
426 purpose of manipulating human hormonal structure so as to:

427 (A) increase muscle mass, strength, or weight without medical necessity and without a
428 written prescription by any practitioner in the course of his professional practice; or

429 (B) improve performance in any form of human exercise, sport, or game.

430 (b) The division may limit revocation or suspension of a license to a particular

431 controlled substance with respect to which grounds for revocation or suspension exist.

432 (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to
433 this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of
434 Occupational and Professional Licensing Act, and conducted in conjunction with the
435 appropriate representative committee designated by the director of the department.

436 (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and
437 Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses,
438 except where the division is designated by law to perform those functions, or, when not
439 designated by law, is designated by the executive director of the Department of Commerce to
440 conduct the proceedings.

441 (d) (i) The division may suspend any license simultaneously with the institution of
442 proceedings under this section if it finds there is an imminent danger to the public health or
443 safety.

444 (ii) Suspension shall continue in effect until the conclusion of proceedings, including
445 judicial review, unless withdrawn by the division or dissolved by a court of competent
446 jurisdiction.

447 (e) (i) If a license is suspended or revoked under this Subsection (4), all controlled
448 substances owned or possessed by the licensee may be placed under seal in the discretion of the
449 division.

450 (ii) Disposition may not be made of substances under seal until the time for taking an
451 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,
452 orders the sale of perishable substances and the proceeds deposited with the court.

453 (iii) If a revocation order becomes final, all controlled substances shall be forfeited.

454 (f) The division shall notify promptly the Drug Enforcement Administration of all
455 orders suspending or revoking a license and all forfeitures of controlled substances.

456 (5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and
457 inventories in conformance with the record keeping and inventory requirements of federal and
458 state law and any additional rules issued by the division.

459 (b) (i) Every physician, dentist, veterinarian, practitioner, or other person who is
460 authorized to administer or professionally use a controlled substance shall keep a record of the
461 drugs received by him and a record of all drugs administered, dispensed, or professionally used

462 by him otherwise than by a prescription.

463 (ii) A person using small quantities or solutions or other preparations of those drugs for
464 local application has complied with this Subsection (5)(b) if he keeps a record of the quantity,
465 character, and potency of those solutions or preparations purchased or prepared by him, and of
466 the dates when purchased or prepared.

467 (6) Controlled substances in Schedules I through V may be distributed only by a
468 licensee and pursuant to an order form prepared in compliance with division rules or a lawful
469 order under the rules and regulations of the United States.

470 (7) (a) A person may not write or authorize a prescription for a controlled substance
471 unless he is:

472 (i) a practitioner authorized to prescribe drugs and medicine under the laws of this state
473 or under the laws of another state having similar standards; and

474 (ii) licensed under this chapter or under the laws of another state having similar
475 standards.

476 (b) A person other than a pharmacist licensed under the laws of this state, or his
477 licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not dispense a
478 controlled substance.

479 (c) (i) A controlled substance may not be dispensed without the written prescription of
480 a practitioner, if the written prescription is required by the federal Controlled Substances Act.

481 (ii) That written prescription shall be made in accordance with Subsection (7)(a) and in
482 conformity with Subsection (7)(d).

483 (iii) In emergency situations, as defined by division rule, controlled substances may be
484 dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms
485 designated by the division and filed by the pharmacy.

486 (iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with
487 Subsection (7)(d).

488 (d) Except for emergency situations designated by the division, a person may not issue,
489 fill, compound, or dispense a prescription for a controlled substance unless the prescription is
490 signed by the prescriber in ink or indelible pencil or is signed with an electronic [~~or digital~~]
491 signature of the prescriber as authorized by division rule, and contains the following
492 information:

493 (i) the name, address, and registry number of the prescriber;
494 (ii) the name, address, and age of the person to whom or for whom the prescription is

495 issued;

496 (iii) the date of issuance of the prescription; and

497 (iv) the name, quantity, and specific directions for use by the ultimate user of the
498 controlled substance.

499 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I
500 controlled substance.

501 (f) Except when administered directly to an ultimate user by a licensed practitioner,
502 controlled substances are subject to the following restrictions:

503 (i) (A) A prescription for a Schedule II substance may not be refilled.

504 (B) A Schedule II controlled substance may not be filled in a quantity to exceed a
505 one-month's supply, as directed on the daily dosage rate of the prescriptions.

506 (ii) A Schedule III or IV controlled substance may be filled only within six months of
507 issuance, and may not be refilled more than six months after the date of its original issuance or
508 be refilled more than five times after the date of the prescription unless renewed by the
509 practitioner.

510 (iii) All other controlled substances in Schedule V may be refilled as the prescriber's
511 prescription directs, but they may not be refilled one year after the date the prescription was
512 issued unless renewed by the practitioner.

513 (iv) Any prescription for a Schedule II substance may not be dispensed if it is not
514 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days
515 after the date the prescription was issued, or 30 days after the dispensing date, if that date is
516 specified separately from the date of issue.

517 (v) A practitioner may issue more than one prescription at the same time for the same
518 Schedule II controlled substance, but only under the following conditions:

519 (A) no more than three prescriptions for the same Schedule II controlled substance may
520 be issued at the same time;

521 (B) no one prescription may exceed a 30-day supply;

522 (C) a second or third prescription shall include the date of issuance and the date for
523 dispensing; and

524 (D) unless the practitioner determines there is a valid medical reason to the contrary,
525 the date for dispensing a second or third prescription may not be fewer than 30 days from the
526 dispensing date of the previous prescription.

527 (vi) Each prescription for a controlled substance may contain only one controlled
528 substance per prescription form and may not contain any other legend drug or prescription
529 item.

530 (g) An order for a controlled substance in Schedules II through V for use by an
531 inpatient or an outpatient of a licensed hospital is exempt from all requirements of this
532 Subsection (7) if the order is:

533 (i) issued or made by a prescribing practitioner who holds an unrestricted registration
534 with the federal Drug Enforcement Administration, and an active Utah controlled substance
535 license in good standing issued by the division under this section, or a medical resident who is
536 exempted from licensure under Subsection 58-1-307(1)(c);

537 (ii) authorized by the prescribing practitioner treating the patient and the prescribing
538 practitioner designates the quantity ordered;

539 (iii) entered upon the record of the patient, the record is signed by the prescriber
540 affirming his authorization of the order within 48 hours after filling or administering the order,
541 and the patient's record reflects the quantity actually administered; and

542 (iv) filled and dispensed by a pharmacist practicing his profession within the physical
543 structure of the hospital, or the order is taken from a supply lawfully maintained by the hospital
544 and the amount taken from the supply is administered directly to the patient authorized to
545 receive it.

546 (h) A practitioner licensed under this chapter may not prescribe, administer, or
547 dispense a controlled substance to a minor, without first obtaining the consent required in
548 Section 78-14-5 of a parent, guardian, or person standing in loco parentis of the minor except
549 in cases of an emergency. For purposes of this Subsection (7)(h), "minor" has the same
550 meaning as defined in Section 78-3a-103, and "emergency" means any physical condition
551 requiring the administration of a controlled substance for immediate relief of pain or suffering.

552 (i) A practitioner licensed under this chapter may not prescribe or administer dosages
553 of a controlled substance in excess of medically recognized quantities necessary to treat the
554 ailment, malady, or condition of the ultimate user.

555 (j) A practitioner licensed under this chapter may not prescribe, administer, or dispense
556 any controlled substance to another person knowing that the other person is using a false name,
557 address, or other personal information for the purpose of securing the controlled substance.

558 (k) A person who is licensed under this chapter to manufacture, distribute, or dispense
559 a controlled substance may not manufacture, distribute, or dispense a controlled substance to
560 another licensee or any other authorized person not authorized by this license.

561 (l) A person licensed under this chapter may not omit, remove, alter, or obliterate a
562 symbol required by this chapter or by a rule issued under this chapter.

563 (m) A person licensed under this chapter may not refuse or fail to make, keep, or
564 furnish any record notification, order form, statement, invoice, or information required under
565 this chapter.

566 (n) A person licensed under this chapter may not refuse entry into any premises for
567 inspection as authorized by this chapter.

568 (o) A person licensed under this chapter may not furnish false or fraudulent material
569 information in any application, report, or other document required to be kept by this chapter or
570 willfully make any false statement in any prescription, order, report, or record required by this
571 chapter.

572 (8) (a) (i) Any person licensed under this chapter who is found by the division to have
573 violated any of the provisions of Subsections (7)(k) through (7)(o) is subject to a penalty not to
574 exceed \$5,000. The division shall determine the procedure for adjudication of any violations in
575 accordance with Sections 58-1-106 and 58-1-108.

576 (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the
577 General Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

578 (b) Any person who knowingly and intentionally violates Subsections (7)(h) through
579 (7)(j) is:

580 (i) upon first conviction, guilty of a class B misdemeanor;

581 (ii) upon second conviction, guilty of a class A misdemeanor; and

582 (iii) on third or subsequent conviction, guilty of a third degree felony.

583 (c) Any person who knowingly and intentionally violates Subsections (7)(k) through
584 (7)(o) shall upon conviction be guilty of a third degree felony.

585 (9) Any information communicated to any licensed practitioner in an attempt to

586 unlawfully procure, or to procure the administration of, a controlled substance is not considered
587 to be a privileged communication.

588 Section 10. Section **63F-1-206** is amended to read:

589 **63F-1-206. Rulemaking -- Policies.**

590 (1) (a) Except as provided in Subsection (2), in accordance with Title 63, Chapter 46a,
591 Utah Administrative Rulemaking Act, the chief information officer shall make rules that:

592 (i) provide standards that impose requirements on executive branch agencies that:

593 (A) are related to the security of the statewide area network; and

594 (B) establish standards for when an agency must obtain approval before obtaining
595 items listed in Subsection 63F-1-205(1);

596 (ii) specify the detail and format required in an agency information technology plan
597 submitted in accordance with Section 63F-1-204;

598 (iii) provide for standards related to the privacy policies of websites operated by or on
599 behalf of an executive branch agency;

600 (iv) provide for the acquisition, licensing, and sale of computer software;

601 (v) specify the requirements for the project plan and business case analysis required by
602 Section 63F-1-205;

603 (vi) provide for project oversight of agency technology projects when required by
604 Section 63F-1-205;

605 (vii) establish, in accordance with Subsection 63F-1-205(2), the implementation of the
606 needs assessment for information technology purchases; and

607 (viii) establish telecommunications standards and specifications in accordance with
608 Section 63F-1-404[~~;~~and].

609 [~~(ix) establish policies regarding the issuance of digital certificates by government~~
610 ~~entities under Section 46-3-601.]~~

611 (b) The rulemaking authority in this Subsection (1) is in addition to any other
612 rulemaking authority granted by this title.

613 (2) (a) Notwithstanding Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
614 and subject to Subsection (2)(b), the chief information officer may adopt a policy that outlines
615 procedures to be followed by the chief information officer in facilitating the implementation of
616 this title by executive branch agencies if the policy:

- 617 (i) is consistent with the executive branch strategic plan; and
618 (ii) is not required to be made by rule under Subsection (1) or Section 63-46a-3.
- 619 (b) (i) A policy adopted by the chief information officer under Subsection (2)(a) may
620 not take effect until 30 days after the day on which the chief information officer submits the
621 policy to:
- 622 (A) the governor; and
623 (B) all cabinet level officials.
- 624 (ii) During the 30-day period described in Subsection (2)(b)(i), cabinet level officials
625 may review and comment on a policy submitted under Subsection (2)(b)(i).
- 626 (3) (a) Notwithstanding Subsection (1) or (2) or Title 63, Chapter 46a, Utah
627 Administrative Rulemaking Act, without following the procedures of Subsection (1) or (2), the
628 chief information officer may adopt a security procedure to be followed by executive branch
629 agencies to protect the statewide area network if:
- 630 (i) broad communication of the security procedure would create a significant potential
631 for increasing the vulnerability of the statewide area network to breach or attack; and
632 (ii) after consultation with the chief information officer, the governor agrees that broad
633 communication of the security procedure would create a significant potential increase in the
634 vulnerability of the statewide area network to breach or attack.
- 635 (b) A security procedure described in Subsection (3)(a) is classified as a protected
636 record under Title 63, Chapter 2, Government Records Access and Management Act.
- 637 (c) The chief information officer shall provide a copy of the security procedure as a
638 protected record to:
- 639 (i) the chief justice of the Utah Supreme Court for the judicial branch;
640 (ii) the speaker of the House of Representatives and the president of the Senate for the
641 legislative branch;
642 (iii) the chair of the Board of Regents; and
643 (iv) the chair of the State Board of Education.
- 644 Section 11. Section **76-6-1102** is amended to read:
645 **76-6-1102. Identity fraud crime.**
646 (1) For purposes of this part, "personal identifying information" may include:
647 (a) name;

- 648 (b) address;
- 649 (c) telephone number;
- 650 (d) driver's license number;
- 651 (e) Social Security number;
- 652 (f) place of employment;
- 653 (g) employee identification numbers or other personal identification numbers;
- 654 (h) mother's maiden name;
- 655 (i) electronic identification numbers;
- 656 (j) ~~[digital signatures or a private key]~~ electronic signatures under Title 46, Chapter 4,
- 657 Uniform Electronic Transactions Act; or

658 (k) any other numbers or information that can be used to access a person's financial

659 resources or medical information in the name of another person without the consent of that

660 person except for numbers or information that can be prosecuted as financial transaction card

661 offenses under Sections 76-6-506 through 76-6-506.4.

662 (2) A person is guilty of identity fraud when that person knowingly or intentionally:

663 (a) obtains personal identifying information of another person whether that person is

664 alive or deceased; and

665 (b) uses, or attempts to use, that information with fraudulent intent, including to obtain,

666 or attempt to obtain, credit, goods, services, any other thing of value, or medical information in

667 the name of another person.

668 (3) Identity fraud is:

669 (a) a third degree felony if the value of the credit, goods, services, or any other thing of

670 value is less than \$5,000; or

671 (b) a second degree felony if the value of the credit, goods, services, or any other thing

672 of value is or exceeds \$5,000.

673 (4) Multiple violations may be aggregated into a single offense, and the degree of the

674 offense is determined by the total value of all credit, goods, services, or any other thing of

675 value used, or attempted to be used, through the multiple violations.

676 Section 12. Section **78-7-34** is amended to read:

677 **78-7-34. Electronic writing.**

678 (1) Except as restricted by the Constitution of the United States or of this state, any

679 writing required or permitted by this code to be filed with or prepared by a court may be filed
680 or prepared in an electronic medium and by electronic transmission subject to the ability of the
681 recipient to accept and process the electronic writing.

682 (2) Any writing required to be signed that is filed with or prepared by a court in an
683 electronic medium or by electronic transmission shall be signed by ~~[digital]~~ electronic signature
684 in accordance with Title 46, Chapter ~~[3, Utah Digital Signature Act]~~ 4, Uniform Electronic
685 Transactions Act.

686 Section 13. **Repealer.**

687 This bill repeals:

688 Section **46-3-101, Title.**

689 Section **46-3-102, Purposes and construction.**

690 Section **46-3-103, Definitions.**

691 Section **46-3-104, Role of the division.**

692 Section **46-3-201, Licensure and qualifications of certification authorities.**

693 Section **46-3-202, Performance audits and investigations.**

694 Section **46-3-203, Enforcement of requirements for licensed certificate authorities.**

695 Section **46-3-204, Dangerous activities by any certification authority prohibited.**

696 Section **46-3-301, General requirements for certification authorities.**

697 Section **46-3-302, Issuance of a certificate.**

698 Section **46-3-303, Warranties and obligations of certification authority upon**
699 **issuance of a certificate.**

700 Section **46-3-304, Representations and duties upon acceptance of a certificate.**

701 Section **46-3-305, Control of the private key.**

702 Section **46-3-306, Suspension of a certificate -- Criminal penalty.**

703 Section **46-3-307, Revocation of a certificate.**

704 Section **46-3-308, Expiration of a certificate.**

705 Section **46-3-309, Recommended reliance limits and liability.**

706 Section **46-3-310, Collection based on suitable guaranty.**

707 Section **46-3-401, Satisfaction of signature requirements.**

708 Section **46-3-402, Unreliable digital signatures.**

709 Section **46-3-403, Digitally signed document is written.**

- 710 Section **46-3-404, Digitally signed originals.**
- 711 Section **46-3-405, Certificate as an acknowledgment.**
- 712 Section **46-3-406, Presumptions in adjudicating disputes.**
- 713 Section **46-3-501, Recognition of repositories.**
- 714 Section **46-3-502, Liability of repositories.**
- 715 Section **46-3-504, Exemptions.**
- 716 Section **46-3-601, Central repository for digital certificate information -- Fee.**
- 717 Section **46-3-602, County clerk participation and fee authorization.**

Legislative Review Note
as of 11-9-05 3:49 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-22-05 8:31 AM

The Government Operations Interim Committee recommended this bill.