

Senator John L. Valentine proposes to substitute the following bill:

1 NOTARY PUBLIC REQUIREMENTS

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: John L. Valentine**

5 AN ACT RELATING TO NOTARIZATION AND AUTHENTICATION OF DOCUMENTS;

6 ~~§ [EXEMPTING ATTORNEYS FROM THE TESTING REQUIREMENT TO BECOME A~~

7 ~~NOTARY PUBLIC; AND]~~ § ALLOWING NOTARIES TO AUTHENTICATE ELECTRONIC
8 SIGNATURES.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **46-1-2**, as last amended by Chapter 231, Laws of Utah 1999

12 **46-1-3**, as last amended by Chapter 231, Laws of Utah 1999

13 **46-1-6**, as repealed and reenacted by Chapter 287, Laws of Utah 1998

14 **46-1-14**, as repealed and reenacted by Chapter 287, Laws of Utah 1998

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

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

17 **46-1-2. Definitions.**

18 As used in this chapter:

19 (1) "Acknowledgment" means a notarial act in which a notary certifies that a signer, whose
20 identity is personally known to the notary or proven on the basis of satisfactory evidence, has
21 admitted, ~~[in the notary's presence, having signed]~~ and which admission is made either in the
22 presence of the notary or by an electronic communication that is as reliable as an admission made
23 in the presence of the notary, provided that the electronic communication is authorized by law or
24 rule, signing a document voluntarily for its stated purpose.

25 (2) "Commission" means to empower to perform notarial acts and the written authority

26 to perform those acts.

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

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

33 (5) "Notarial act" and "notarization" mean any act that a notary is empowered to perform
34 under this section.

35 (6) "Notarial certificate" means the part of or attachment to a notarized document for
36 completion by the notary and bearing the notary's signature and seal.

37 (7) "Notary" means any person commissioned to perform notarial acts under this chapter.

38 (8) "Oath" or "affirmation" means a notarial act in which a notary certifies that a person
39 made a vow or affirmation in the presence of the notary on penalty of perjury.

40 (9) "Official misconduct" means a notary's performance of any act prohibited or failure to
41 perform any act mandated by this chapter or by any other law in connection with a notarial act.

42 (10) "Personal knowledge of identity" means familiarity with an individual resulting from
43 interactions with that individual over a period of time sufficient to eliminate every reasonable
44 doubt that the individual has the identity claimed.

45 (11) "Satisfactory evidence of identity" means identification of an individual based on:

46 (a) a current document issued by a federal or state government with the individual's
47 photograph, signature, and physical description; [or]

48 (b) the oath or affirmation of a credible person who is personally known to the notary and
49 who personally knows the individual[-]; or

50 (c) by electronic protocols as reliable as those set forth in Subsections (11)(a) or (b) and
51 established by law or rule.

52 Section 2. Section **46-1-3** is amended to read:

53 **46-1-3. Qualifications -- Commissioning -- Jurisdiction and term -- Exceptions.**

54 (1) Except as provided in Subsection (3), the director of the Division of Corporations and
55 Commercial Code shall commission as a notary any qualified person who submits an application
56 in accordance with this chapter.

- 57 (2) A person qualified for a notarial commission shall:
- 58 (a) be 18 years of age or older;
- 59 (b) lawfully reside in this state 30 days immediately preceding the filing for a notarial
- 60 commission and maintain permanent residency thereafter;
- 61 (c) be able to read, write, and understand English;
- 62 (d) submit an application to the Division of Corporations and Commercial Code
- 63 containing no significant misstatement or omission of fact and include at least:
- 64 (i) a statement of the applicant's personal qualifications, the applicant's residence address,
- 65 a business address in this state, daytime telephone number, and voter precinct number;
- 66 (ii) the applicant's age and date of birth;
- 67 (iii) all criminal convictions of the applicant, including any pleas of admission and nolo
- 68 contendere;
- 69 (iv) all issuances, denials, revocations, suspensions, restrictions, and resignations of a
- 70 notarial commission or other professional license involving the applicant in this or any other state;
- 71 (v) the acknowledgment of a passing score by the applicant on a written examination
- 72 administered under Subsection (5);
- 73 (vi) a declaration by the applicant; and
- 74 (vii) an application fee determined under Section 63-38-3.2;
- 75 (e) be a registered voter in Utah or have permanent resident status under Section 245 of
- 76 the Immigration and Nationality Act; and
- 77 (f) be endorsed by two registered voters of the state.
- 78 (3) The director of the Division of Corporations and Commercial Code may deny an
- 79 application based on:
- 80 (a) the applicant's conviction for a crime involving dishonesty or moral turpitude;
- 81 (b) any revocation, suspension, or restriction of a notarial commission or professional
- 82 license issued to the applicant by this or any other state;
- 83 (c) the applicant's official misconduct while acting in the capacity of a notary; or
- 84 (d) the applicant's failure to pass the written examination.
- 85 (4) A person commissioned as a notary by the Division of Corporations and Commercial
- 86 Code may perform notarial acts in any part of this state for a term of four years, unless the person
- 87 resigned or the commission is revoked or suspended under Section 46-1-19.

88 (5) (a) Each applicant for a notarial commission shall take a written examination approved
89 by the division and submit the examination to a testing center designated by the division for
90 purposes of scoring the examination. The testing center designated by the division shall issue a
91 written acknowledgment to the applicant indicating whether the applicant passed or failed the
92 examination.

93 (b) The division shall make rules pursuant to Title 63, Chapter 46a, Utah Administrative
94 Rulemaking Act, to implement the examination process required by Subsection (a).

95 ~~§ (c) The testing requirement does not apply to attorneys licensed to practice law in this~~
96 ~~state.] §~~

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

98 **46-1-6. Powers and limitations.**

99 ~~[A notary may perform the]~~ The following notarial acts may be performed by a notary
100 within the state:

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

103 (a) An electronic or digital signature that is authenticated pursuant to this Subsection (1)
104 shall be considered an authenticated electronic or digital signature.

105 (b) If all parties to a document consent, an authenticated electronic or digital signature may
106 be treated as a notarized signature on the document, unless otherwise provided by law or rule.

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

110 (2) ~~[copy]~~ Copy certifications[;].

111 (3) ~~[jurats; and]~~ Jurats.

112 (4) ~~[oaths]~~ Oaths or affirmations.

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

114 **46-1-14. Entries in journal.**

115 (1) For every notarial act, the notary may record in the journal at the time of notarization
116 the following information including:

117 (a) the date and time of day of the notarial act;

118 (b) the type of notarial act;

- 119 (c) a description of the document or proceeding;
- 120 (d) the signature and printed name and address of each person for whom a notarial act is
121 performed;
- 122 (e) the evidence of identity of each person for whom a notarial act is performed, in the
123 form of either:
- 124 (i) a statement that the person is "personally known" to the notary; or
- 125 (ii) a description of the identification document, its issuing agency, its serial or
126 identification number, and its date of issuance or expiration; and
- 127 (iii) the signature and printed name and address of a credible witness swearing or affirming
128 to the person's identity; and
- 129 (f) the fee, if any, charged for the notarial act.
- 130 (2) A notary may record in the journal the circumstances in refusing to perform or
131 complete a notarial act.
- 132 (3) If a notarization is performed electronically, the notary may keep an electronic journal
133 in which to record the information described in Subsections (1) and (2). All electronic
134 notarizations shall be evidenced by a digital signature.