

REPEAL OF UTAH DIGITAL SIGNATURE

ACT

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Douglas C. Aagard

Cosponsors: Brent H. Goodfellow Parley G. Hellewell

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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40 **46-3-102**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
41 **46-3-103**, as repealed and reenacted by Chapter 205, Laws of Utah 1996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45 **46-3-203**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
46 **46-3-204**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
47 **46-3-301**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
48 **46-3-302**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
49 **46-3-303**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
50 **46-3-304**, as repealed and reenacted by Chapter 205, Laws of Utah 1996
51 **46-3-305**, as repealed and reenacted by Chapter 205, Laws of Utah 1996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**

46-1-2. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

every reasonable doubt that the individual has the identity claimed.

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

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

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

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

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

46-1-6. Powers and limitations.

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

(1) acknowledgments;

(2) copy certifications;

(3) jurats; and

(4) oaths or affirmations.

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

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

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

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

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

~~[(3) Jurats:]~~

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

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

46-1-14. Entries in journal.

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

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

(b) the type of notarial act;

(c) a description of the document or proceeding;

(d) the signature and printed name and address of each person for whom a notarial act is performed;

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

(i) a statement that the person is "personally known" to the notary; [~~or~~]

(ii) a description of the identification document, its issuing agency, its serial or identification number, and its date of issuance or expiration; [~~and~~] or

(iii) the signature and printed name and address of a credible witness swearing or affirming to the person's identity; and

(f) the fee, if any, charged for the notarial act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

commission; ~~and~~

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

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

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

46-4-205. Notarization and acknowledgment.

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

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

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

48-2c-102. Definitions.

As used in this chapter:

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

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

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

(a) the value of all contributions by that member;

(b) the amount of all distributions to that member or the member's assignee;

(c) the member's share of profits, gains, and losses of the company; and

(d) the member's share of the net assets of the company upon dissolution and winding up that are distributable to the member or the member's assignee.

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

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

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

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

(i) an interest in the company; or

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

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

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

(8) "Entity" includes:

(a) a domestic or foreign corporation;

(b) a domestic or foreign nonprofit corporation;

(c) a company or foreign company;

(d) a profit or nonprofit unincorporated association;

(e) a business trust;

(f) an estate;

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

(h) a trust;

(i) a state;

(j) the United States; or

(k) a foreign government.

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

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

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

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

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

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

including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(23) "State" means:

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

(b) the District of Columbia; or

(c) the Commonwealth of Puerto Rico.

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

53-7-107. Electronic writing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) maintained effective controls against diversion of controlled substances and any Schedule I or II substance compounded from any controlled substance into other than legitimate medical, scientific, or industrial channels;

(ii) complied with applicable state and local law;

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

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

(v) established effective controls against diversion; and

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

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

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

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

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

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

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

division evidence of federal registration.

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

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

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

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

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

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

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

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

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

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

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

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

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

(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

by him otherwise than by a prescription.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) is consistent with the executive branch strategic plan; and

(ii) is not required to be made by rule under Subsection (1) or Section 63-46a-3.

(b) (i) A policy adopted by the chief information officer under Subsection (2)(a) may not take effect until 30 days after the day on which the chief information officer submits the policy to:

(A) the governor; and

(B) all cabinet level officials.

(ii) During the 30-day period described in Subsection (2)(b)(i), cabinet level officials may review and comment on a policy submitted under Subsection (2)(b)(i).

(3) (a) Notwithstanding Subsection (1) or (2) or Title 63, Chapter 46a, Utah Administrative Rulemaking Act, without following the procedures of Subsection (1) or (2), the chief information officer may adopt a security procedure to be followed by executive branch agencies to protect the statewide area network if:

(i) broad communication of the security procedure would create a significant potential for increasing the vulnerability of the statewide area network to breach or attack; and

(ii) after consultation with the chief information officer, the governor agrees that broad communication of the security procedure would create a significant potential increase in the vulnerability of the statewide area network to breach or attack.

(b) A security procedure described in Subsection (3)(a) is classified as a protected record under Title 63, Chapter 2, Government Records Access and Management Act.

(c) The chief information officer shall provide a copy of the security procedure as a protected record to:

(i) the chief justice of the Utah Supreme Court for the judicial branch;

(ii) the speaker of the House of Representatives and the president of the Senate for the legislative branch;

(iii) the chair of the Board of Regents; and

(iv) the chair of the State Board of Education.

Section 11. Section **76-6-1102** is amended to read:

76-6-1102. Identity fraud crime.

(1) For purposes of this part, "personal identifying information" may include:

(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

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

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

Section 13. Repealer.

This bill repeals:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.