

**Representative Eric K. Hutchings** proposes the following substitute bill:

**NOTARIES PUBLIC AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

Senate Sponsor: Jerry W. Stevenson

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**LONG TITLE**

**General Description:**

This bill amends provisions related to the notarization and authentication of documents.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ amends provisions related to the notarization and authentication of documents; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**46-1-2**, as last amended by Laws of Utah 2009, Chapter 315

**46-1-3**, as last amended by Laws of Utah 2009, Chapter 183

**46-1-15**, as repealed and reenacted by Laws of Utah 1998, Chapter 287

**46-1-16**, as last amended by Laws of Utah 2008, Chapter 47

**46-1-18**, as last amended by Laws of Utah 2007, Chapter 95



26 46-1-20, as last amended by Laws of Utah 2008, Chapter 47

27 REPEALS AND REENACTS:

28 46-1-5, as last amended by Laws of Utah 1998, Chapter 287

29 46-1-6, as last amended by Laws of Utah 2006, Chapter 21

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

32 Section 1. Section 46-1-2 is amended to read:

33 **46-1-2. Definitions.**

34 As used in this chapter:

35 (1) "Acknowledgment" means a notarial act in which a notary certifies that a signer,  
36 whose identity is personally known to the notary or proven on the basis of satisfactory  
37 evidence, has admitted, in the presence of the notary, to voluntarily signing a document for the  
38 document's stated purpose.

39 (2) "Commission" means:

40 (a) to empower to perform notarial acts; ~~and~~ or

41 (b) the written document that gives authority to perform ~~those~~ notarial acts~~[-]~~,  
42 including the Certificate of Authority of Notary Public issued by the lieutenant governor to a  
43 notary.

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

47 (4) "Electronic signature" ~~[has the same meaning as provided under]~~ means the same as  
48 that term is defined in Section 46-4-102.

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

53 (6) "Notarial act" ~~[and]~~ or "notarization" ~~[mean any]~~ means an act that a notary is  
54 ~~[empowered]~~ authorized to perform under this ~~[section]~~ chapter.

55 (7) "Notarial certificate" means the part of<sub>2</sub> or attachment to<sub>2</sub> a notarized document ~~[for~~  
56 ~~completion by the notary and bearing the notary's signature and seal.]~~ that:

- 57            (a) is completed by the notary;
- 58            (b) bears the notary's signature and seal; and
- 59            (c) states the:
- 60            (i) venue;
- 61            (ii) date of the signing; and
- 62            (iii) if applicable, name of each individual whose signature is being notarized.
- 63            (8) "Notarial language" means the writing that constitutes a notarial act described in

64 Section 46-1-6.

65            [~~(8)~~] (9) "Notary" means any person commissioned to perform notarial acts under this  
66 chapter.

67            [~~(9)~~] (10) "Oath" or "affirmation" means a notarial act in which a notary certifies that a  
68 person made a vow or affirmation in the presence of the notary on penalty of perjury.

69            [~~(10)~~] (11) "Official misconduct" means a notary's performance of any act prohibited or  
70 failure to perform any act mandated by this chapter or by any other law in connection with a  
71 notarial act.

72            [~~(11)~~ "Personal knowledge of identity"]

73            (12) "Personally known" means familiarity with an individual resulting from  
74 interactions with that individual over a period of time sufficient to eliminate every reasonable  
75 doubt that the individual has the identity claimed.

76            [~~(12)~~] (13) (a) "Satisfactory evidence of identity" means identification of an individual  
77 based on:

78            (i) valid personal identification with the individual's photograph, signature, and  
79 physical description issued by the United States government, any state within the United States,  
80 or a foreign government;

81            (ii) a valid passport issued by any nation; or

82            (iii) the oath or affirmation of a credible person who is personally known to the notary  
83 and who personally knows the individual.

84            (b) "Satisfactory evidence of identity" does not include:

85            (i) a driving privilege card under Subsection 53-3-207(10); or

86            (ii) another document that is not considered valid for identification.

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

88 **46-1-3. Qualifications -- Application for notary required.**

89 (1) Except as provided in Subsection (3), the lieutenant governor shall commission as a  
90 notary any qualified person who submits an application in accordance with this chapter.

91 (2) ~~[A person qualified]~~ An individual who applies for a notarial commission shall:

92 (a) be at least 18 years of age ~~[or older]~~;

93 (b) lawfully reside in ~~[this state 30 days immediately preceding the filing]~~ the state for  
94 at least 30 days immediately before the individual applies for a notarial commission ~~[and]~~;

95 (c) if the individual receives a notarial commission, maintain permanent residency  
96 [thereafter] in the state after receiving the notarial commission;

97 ~~[(c)]~~ (d) be able to read, write, and understand English;

98 ~~[(d)]~~ (e) submit an application to the lieutenant governor, containing no significant  
99 misstatement or omission of fact ~~[and include at least]~~, that includes:

100 ~~[(i) a statement of the applicant's personal qualifications, the applicant's residence~~  
101 ~~address, a business address in this state, and daytime telephone number;]~~

102 ~~[(ii) the applicant's age and date of birth;]~~

103 ~~[(iii) all criminal convictions of the applicant, including any pleas of admission and~~  
104 ~~nolo contendere;]~~

105 (i) the individual's name as it will appear on the commission;

106 (ii) an affirmation that the individual meets the requirements of this section;

107 (iii) the individual's residential address, business address in the state, and daytime  
108 telephone number;

109 (iv) the individual's date of birth;

110 (v) an indication of all criminal convictions the individual has received, including a  
111 plea of admission or no contest;

112 ~~[(iv)]~~ (vi) all issuances, denials, revocations, suspensions, restrictions, and resignations  
113 of a notarial commission or other professional license involving the applicant in this or any  
114 other state;

115 ~~[(v) the acknowledgment of a passing score by the applicant on a written examination~~  
116 ~~administered under Subsection (5);]~~

117 ~~[(vi) a declaration by the applicant; and]~~

118 ~~[(vii) an application fee determined under Section 63J-1-504;]~~

119 (vii) an indication that the individual has passed the examination administered under  
 120 Subsection (5); and

121 (viii) payment of the application fee administered under Section 63J-1-504; and  
 122 ~~[(e)]~~ (f) be a Utah resident or have permanent resident status under Section 245 of the  
 123 Immigration and Nationality Act~~;~~ and].

124 ~~[(f) be endorsed by two residents of the state who are over the age of 18.]~~

125 (3) The lieutenant governor may deny an application based on:

126 (a) the applicant's conviction for a crime involving dishonesty or moral turpitude;

127 (b) any revocation, suspension, or restriction of a notarial commission or professional  
 128 license issued to the applicant by this or any other state;

129 (c) the applicant's official misconduct while acting in the capacity of a notary; or

130 (d) the applicant's failure to pass the written examination.

131 (4) A person commissioned as a notary by the lieutenant governor may perform  
 132 notarial acts in any part of this state for a term of four years, unless the person resigned or the  
 133 commission is revoked or suspended under Section 46-1-19.

134 (5) ~~[Each]~~ (a) An applicant for a notarial commission shall take [a written] an  
 135 examination approved by the lieutenant governor [and submit the examination to a testing  
 136 center designated by the lieutenant governor for purposes of scoring the examination. The] at a  
 137 testing center approved by the lieutenant governor.

138 (b) A testing center [designated by the lieutenant governor] at which an applicant takes  
 139 an examination under Subsection (5)(a) shall issue [a written] an acknowledgment to the  
 140 applicant indicating whether the applicant passed or failed the examination.

141 Section 3. Section 46-1-5 is repealed and reenacted to read:

142 **46-1-5. Recommissioning.**

143 An individual who applies for recommissioning as a notary is required to:

144 (1) submit a new application under Subsection 46-1-3(2)(e);

145 (2) retake and pass the examination described in Subsection 46-1-3(5);

146 (3) submit a new bond; and

147 (4) comply with the provisions of this chapter.

148 Section 4. Section 46-1-6 is repealed and reenacted to read:

149 **46-1-6. Powers and limitations.**

150 (1) A commissioned notary may perform the following acts:

151 (a) an acknowledgment;

152 (b) a copy certification;

153 (c) a jurat; and

154 (d) an oath or affirmation.

155 (2) A commissioned notary may not:

156 (a) perform an act that is not described in Subsection (1); or

157 (b) perform an act described in Subsection (1) if the signer is not in the presence of the

158 notary at the time the notary completes the notarization.

159 Section 5. Section **46-1-15** is amended to read:

160 **46-1-15. Safekeeping and custody of journal.**

161 If a notary maintains a journal[;]:

162 (1) the notary shall[;] keep the journal in the notary's exclusive custody; and

163 ~~[(1) safeguard the journal and all other notarial records as valuable public documents~~

164 ~~and may not destroy the documents; and]~~

165 ~~[(2) keep the journal in the exclusive custody of the notary, not to be used by any other~~

166 ~~notary or surrendered to an employer upon termination of employment.]~~

167 (2) the notary's employer may not require the notary to surrender the journal upon

168 termination of the notary's employment.

169 Section 6. Section **46-1-16** is amended to read:

170 **46-1-16. Official signature -- Official seal -- Seal impression.**

171 (1) In completing a notarial act, a notary shall sign on the notarial certificate exactly

172 and only the name indicated on the notary's commission.

173 (2) (a) A notary shall keep an official notarial seal that is the exclusive property of the

174 notary and that may not be used by any other person.

175 (b) Upon the resignation, revocation, or expiration of a notarial commission, the seal

176 shall be destroyed.

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

178 (3) (a) A new seal shall be obtained for any new commission or recommission.

179 (b) A new seal shall be obtained if the notary changes the notary's name of record at

180 any time during the notary's commission.

181 (c) The seal impression shall be affixed near the notary's official signature on a notarial  
182 certificate and shall include a sharp, legible, and photographically reproducible ink impression  
183 of the notarial seal that consists of:

184 (i) the notary public's name exactly as indicated on the notary's commission;

185 (ii) the words "notary public," "state of Utah," and "my commission expires on  
186 (commission expiration date)";

187 [~~(iii) for a notary seal issued on or after July 1, 2008, the notary's commission number,  
188 exactly as indicated on the notary's commission;~~]

189 [~~(iv)~~] (iii) a facsimile of the great seal of the state; and

190 [~~(v)~~] (iv) a rectangular border no larger than one inch by two and one-half inches  
191 surrounding the required words and seal.

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

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

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

199 (a) the notary signs the [~~acknowledgment~~] notarial language in permanent ink; and

200 (b) the following appear below or immediately adjacent to the notary's signature:

201 (i) the notary's [~~full~~] name and commission number appears exactly as indicated on the  
202 notary's commission;

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 the following information appears  
207 electronically within the message:

208 (a) the notary's [~~full~~] name and commission number appearing exactly as indicated on  
209 the notary's commission; and

210 (b) the words "notary public," "state of Utah," and "my commission expires on \_\_\_\_\_  
211 (date)".

212 Section 7. Section **46-1-18** is amended to read:

213 **46-1-18. Liability.**

214 (1) A notary may be liable to any person for any damage to that person proximately  
215 caused by the notary's misconduct in performing a notarization.

216 (2) (a) A surety for a notary's bond may be liable to any person for damages  
217 proximately caused to that person by the notary's misconduct in performing a notarization, but  
218 the surety's liability may not exceed the penalty of the bond or of any remaining bond funds  
219 that have not been expended to other claimants.

220 (b) Regardless of the number of claimants under Subsection (2)(a), a surety's total  
221 liability may not exceed the penalty of the bond.

222 (3) It is a class B misdemeanor, if not otherwise a criminal offense under this code, for:

223 (a) a notary to [~~perform an act in violation of Section 46-1-9 or Section 46-1-11~~]  
224 violate a provision of this chapter; or

225 (b) the employer of a notary to solicit the notary to [~~perform a notarial act in violation~~]  
226 violate a provision of this chapter.

227 Section 8. Section **46-1-20** is amended to read:

228 **46-1-20. Change of name or address -- Bond policy rider.**

229 (1) Within 30 days [~~of a change in~~] after the day on which a notary changes the notary's  
230 name, the notary shall provide to the lieutenant governor:

231 (a) the notary's new name, including official documentation of the name change; and

232 (b) a bond policy rider obtained in accordance with Subsection (2).

233 (2) To obtain a bond policy rider, the notary shall:

234 (a) notify the surety for the notary's bond;

235 (b) obtain a bond policy rider reflecting both the old and new name of the notary;

236 (c) return [~~a~~] the bond policy rider;

237 (d) destroy the original ["Certificate of Authority of Notary Public"] commission;

238 [~~(d)~~] (e) pay a \$5 fee; and

239 [~~(e)~~] (f) destroy the old official seal.

240 (3) A notary is not required to change the notary's name by adopting the surname of the  
241 notary's spouse.

242 [~~(3)~~] (4) Within 30 days of [a change in the notary's address] the day on which a



243 notary's residential or business address changes, the notary shall provide the notary's new  
244 residential or business address to the lieutenant governor.