

HB0462S01 compared with HB0462

~~deleted text~~ shows text that was in HB0462 but was deleted in HB0462S01.

inserted text shows text that was not in HB0462 but was inserted into HB0462S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: _____

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:

HB0462S01 compared with HB0462

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- 46-1-15, as repealed and reenacted by Laws of Utah 1998, Chapter 287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
- 46-1-20, as last amended by Laws of Utah 2008, Chapter 47

REPEALS AND REENACTS:

- 46-1-5, as last amended by Laws of Utah 1998, Chapter 287
- 46-1-6, as last amended by Laws of Utah 2006, Chapter 21

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

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

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, in the presence of the notary, to voluntarily signing a document for the document's stated purpose.

(2) "Commission" means:

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

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

(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]~~ means the same as that term is defined in Section 46-4-102.

(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

HB0462S01 compared with HB0462

the notary's presence, a voluntary signature and taken an oath or affirmation vouching for the truthfulness of the signed document.

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

(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.~~] that:

(a) is completed by the notary;

(b) bears the notary's signature and seal; and

(c) states the { location, date, and facts to which the notary attests }:

(i) venue;

(ii) date of the signing; and

(iii) if applicable, name of each individual whose signature is being notarized.

(8) "Notarial language" means the writing that constitutes a notarial act described in Section 46-1-6.

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

~~(9)~~ (10) "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.

~~(10)~~ (11) "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.

~~(11) "Personal knowledge of identity"~~

(12) "Personally known" 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.

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

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

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

HB0462S01 compared with HB0462

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

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

- (i) a driving privilege card under Subsection 53-3-207(10); or
- (ii) another document that is not considered valid for identification.

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

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

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

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

- (a) be at least 18 years of age ~~[or older]~~;
- (b) lawfully reside in ~~[this state 30 days immediately preceding the filing]~~ the state for at least 30 days immediately before the individual applies for a notarial commission ~~[and]~~;
- (c) if the individual receives a notarial commission, maintain permanent residency ~~[thereafter]~~ in the state after receiving the notarial commission;

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

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

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

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

~~[(iii) all criminal convictions of the applicant, including any pleas of admission and no contest;]~~

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

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

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

(iv) the individual's date of birth;

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

~~[(iv)]~~ (vi) all issuances, denials, revocations, suspensions, restrictions, and resignations

HB0462S01 compared with HB0462

of a notarial commission or other professional license involving the applicant in this or any other state;

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

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

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

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

(viii) payment of the application fee administered under Section 63J-1-504; and

~~[(e)]~~ (f) be a Utah resident or have permanent resident status under Section 245 of the Immigration and Nationality Act~~[-and]~~.

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

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

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

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

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

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

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

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

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

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

46-1-5. Recommissioning.

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

HB0462S01 compared with HB0462

- (1) submit a new application under Subsection 46-1-3(2)(e);
- (2) retake and pass the examination described in Subsection 46-1-3(5);
- (3) submit a new bond; and
- (4) comply with the provisions of this chapter.

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

46-1-6. Powers and limitations.

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

- (a) an acknowledgment;
- (b) a copy certification;
- (c) a jurat; and
- (d) an oath or affirmation.

(2) A commissioned notary may not:

- (a) perform an act that is not described in Subsection (1); or
- (b) perform an act described in Subsection (1) if the signer is not in the presence of the notary at the time the notary completes the notarization.

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

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

If a notary maintains a journal[;]:

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

~~[(1) safeguard the journal and all other notarial records as valuable public documents and may not destroy the documents; and]~~

~~[(2) keep the journal in the exclusive custody of the notary, not to be used by any other notary or surrendered to an employer upon termination of employment.]~~

(2) the notary's employer may not require the notary to surrender the journal upon termination of the notary's employment.

Section 6. 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.

HB0462S01 compared with HB0462

(b) Upon the resignation, revocation, or expiration of a notarial commission, the seal shall be destroyed.

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

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

(b) A new seal shall be obtained if the notary changes the notary's name of record at any time during the notary's commission.

(c) 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:

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

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

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

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

~~[(v)]~~ (iv) 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 map or plat is considered complete without the imprint of the notary's official seal if:

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

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

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

(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

HB0462S01 compared with HB0462

complete without the imprint of the notary's seal if the following information appears electronically within the message:

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

(b) the words "notary public," "state of Utah," and "my commission expires on _____ (date)".

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

46-1-18. Liability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HB0462S01 compared with HB0462

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

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

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

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

~~[(3)]~~ (4) Within 30 days of [~~a change in the notary's address~~] the day on which a notary's residential or business address changes, the notary shall provide the notary's new residential or business address to the lieutenant governor.

†

Legislative Review Note

Office of Legislative Research and General Counsel