

Representative Eric K. Hutchings proposes the following substitute bill:

NOTARIES PUBLIC AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: D. Gregg Buxton

LONG TITLE

General Description:

This bill amends provisions of the Notaries Public Reform Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies provisions related to the notarization of documents;
- ▶ narrows provisions related to a jurat;
- ▶ includes signature witnessing as a notarial act;
- ▶ removes the authority of the Office of Risk Management to execute a bond for a notary;
- ▶ clarifies reapplication requirements for an individual whose notarial commission expires;
- ▶ provides standard language for a notarial certificate;
- ▶ allows a licensed escrow agent who is also a notary public to notarize certain documents the licensed escrow agent signs; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **46-1-2**, as last amended by Laws of Utah 2009, Chapter 315

31 **46-1-3**, as last amended by Laws of Utah 2009, Chapter 183

32 **46-1-4**, as last amended by Laws of Utah 2003, Chapter 136

33 **46-1-7**, as last amended by Laws of Utah 2008, Chapter 102

34 **46-1-15**, as repealed and reenacted by Laws of Utah 1998, Chapter 287

35 **46-1-16**, as last amended by Laws of Utah 2008, Chapter 47

36 **46-1-18**, as last amended by Laws of Utah 2007, Chapter 95

37 **46-1-20**, as last amended by Laws of Utah 2008, Chapter 47

38 **46-4-205**, as last amended by Laws of Utah 2006, Chapter 21

39 ENACTS:

40 **46-1-6.5**, Utah Code Annotated 1953

41 REPEALS AND REENACTS:

42 **46-1-6**, as last amended by Laws of Utah 2006, Chapter 21

43 REPEALS:

44 **46-1-5**, as last amended by Laws of Utah 1998, Chapter 287



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

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

48 **46-1-2. Definitions.**

49 As used in this chapter:

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

54 (2) "Commission" means:

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

56 (b) the written document that gives authority to perform [~~those~~] notarial acts[.];

57 including the Certificate of Authority of Notary Public that the lieutenant governor issues to a
58 notary.

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

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

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

68 (5) "Jurat" means a notarial act in which a notary certifies:

69 (a) the identity of a signer who:

70 (i) is personally known to the notary; or

71 (ii) provides the notary satisfactory evidence of the signer's identity;

72 (b) that the signer affirms or swears an oath attesting to the truthfulness of a document;

73 and

74 (c) that the signer voluntarily signs the document in the presence of the notary.

75 (6) "Notarial act" [~~and~~] or "notarization" [~~mean any~~] means an act that a notary is
76 [empowered] authorized to perform under [this section] Section 46-1-6.

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

79 Section 46-1-6.5 that is:

80 (a) a part of or attached to a notarized document; and

81 (b) completed by the notary and bears the notary's signature and seal.

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

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

86 (10) "Official misconduct" means a notary's performance of any act prohibited or
87 failure to perform any act mandated by this chapter or by any other law in connection with a

88 notarial act.

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

90 (11) "Personally known" means familiarity with an individual resulting from
91 interactions with that individual over a period of time sufficient to eliminate every reasonable
92 doubt that the individual has the identity claimed.

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

95 (i) valid personal identification with the individual's photograph, signature, and
96 physical description ~~[issued by]~~ that the United States government, any state within the United
97 States, or a foreign government issues;

98 (ii) a valid passport ~~[issued by]~~ that any nation issues; or

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

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

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

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

104 (13) "Signature witnessing" means a notarial act in which an individual:

105 (a) appears in person before a notary and presents a document;

106 (b) provides the notary satisfactory evidence of the individual's identity, or is
107 personally known to the notary; and

108 (c) signs the document in the presence of the notary.

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

110 **46-1-3. Qualifications -- Application for notarial commission required -- Term.**

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

113 (2) ~~[A person qualified]~~ To qualify for a notarial commission an individual shall:

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

115 (b) lawfully reside in ~~[this state 30 days immediately preceding the filing]~~ the state for
116 at least 30 days immediately before the individual applies for a notarial commission ~~[and~~
117 ~~maintain permanent residency thereafter]~~;

118 (c) be able to read, write, and understand English;

119 (d) submit an application to the lieutenant governor containing no significant
120 misstatement or omission of fact [~~and include at least~~], that includes:
121 [~~(i) a statement of the applicant's personal qualifications, the applicant's residence~~
122 ~~address, a business address in this state, and daytime telephone number;~~]
123 [~~(ii) the applicant's age and date of birth;~~]
124 [~~(iii) all criminal convictions of the applicant, including any pleas of admission and~~
125 ~~nolo contendere;~~]
126 (i) the individual's:
127 (A) name as it will appear on the commission;
128 (B) residential address;
129 (C) business address;
130 (D) daytime telephone number; and
131 (E) date of birth;
132 (ii) an affirmation that the individual meets the requirements of this section;
133 (iii) an indication of any criminal convictions the individual has received, including a
134 plea of admission or no contest;
135 (iv) all issuances, denials, revocations, suspensions, restrictions, and resignations of a
136 notarial commission or other professional license involving the applicant in this or any other
137 state;
138 [~~(v) the acknowledgment of a passing score by the applicant on a written examination~~
139 ~~administered under Subsection (5);~~]
140 [~~(vi) a declaration by the applicant; and~~]
141 [~~(vii) an application fee determined under Section 63J-1-504;~~]
142 (v) an indication that the individual has passed the examination described in
143 Subsection (5); and
144 (vi) payment of an application fee that the lieutenant governor establishes in
145 accordance with Section 63J-1-504; and
146 [~~(e) be a Utah resident or~~]
147 (e) (i) be a United States citizen; or
148 (ii) have permanent resident status under Section 245 of the Immigration and
149 Nationality Act[; and].

150 ~~[(f) be endorsed by two residents of the state who are over the age of 18.]~~
151 (3) The lieutenant governor may deny an application based on:
152 (a) the applicant's conviction for a crime involving dishonesty or moral turpitude;
153 (b) any revocation, suspension, or restriction of a notarial commission or professional
154 license issued to the applicant by this or any other state;
155 (c) the applicant's official misconduct while acting in the capacity of a notary; or
156 (d) the applicant's failure to pass the ~~[written]~~ examination described in Subsection (5).
157 (4) (a) ~~[A person commissioned]~~ An individual whom the lieutenant governor
158 commissions as a notary ~~[by the lieutenant governor]~~ may perform notarial acts in any part of
159 ~~[this]~~ the state for a term of four years, unless the person ~~[resigned]~~ resigns or the commission
160 is revoked or suspended under Section [46-1-19](#).
161 (b) (i) After an individual's commission expires, the individual may not perform a
162 notarial act until the individual obtains a new commission.
163 (ii) An individual whose commission expires and who wishes to obtain a new
164 commission shall submit a new application, showing compliance with the requirements of this
165 section.
166 (5) (a) Each applicant for a notarial commission shall take ~~[a written]~~ an examination
167 ~~[approved by]~~ that the lieutenant governor approves and submit the examination to a testing
168 center ~~[designated by]~~ that the lieutenant governor designates for purposes of scoring the
169 examination.
170 (b) The testing center ~~[designated by]~~ that the lieutenant governor designates shall
171 issue a written acknowledgment to the applicant indicating whether the applicant passed or
172 failed the examination.
173 (6) (a) A notary shall maintain permanent residency in the state during the term of the
174 notary's notarial commission.
175 (b) A notary who does not maintain permanent residency under Subsection (6)(a) shall
176 resign the notary's notarial commission in accordance with Section [46-1-21](#).
177 Section 3. Section **46-1-4** is amended to read:
178 **46-1-4. Bond.**
179 ~~[(1)]~~ A notarial commission ~~[may not become]~~ is not effective until:
180 (1) the notary named in the commission takes a constitutional oath of office and files a

181 \$5,000 bond [~~has been filed with and approved by~~] with the lieutenant governor[-] that:

182 (a) [~~The bond shall be executed by~~] a licensed surety executes for a term of four years
183 [~~commencing~~] beginning on the commission's effective date and [~~terminating on its~~] ending on
184 the commission's expiration date[~~, with~~]; and

185 (b) conditions payment of bond funds to any person [~~conditioned~~] upon the notary's
186 misconduct while acting in the scope of [~~his~~] the notary's commission[-]; and

187 [~~(2) The bond required under Subsection (1) may be executed by the Office of Risk~~
188 ~~Management for notaries public employed by a state office or agency.~~]

189 (2) the oath and bond are approved by the lieutenant governor.

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

191 **46-1-6. Powers and limitations.**

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

193 (a) a jurat;

194 (b) an acknowledgment;

195 (c) a signature witnessing;

196 (d) a copy certification; and

197 (e) an oath or affirmation.

198 (2) A notary may not:

199 (a) perform an act as a notary that is not described in Subsection (1); or

200 (b) perform an act described in Subsection (1) if the person for whom the notary
201 performs the notarial act is not in the physical presence of the notary at the time the notary
202 performs the act.

203 Section 5. Section 46-1-6.5 is enacted to read:

204 **46-1-6.5. Form of notarial certificate for document notarizations.**

205 (1) A correctly completed affidavit in substantially the form described in this section,
206 that is included in or attached to a document, is sufficient for the completion of a notarization
207 under this Title 46, Chapter 1, Notaries Public Reform Act.

208 (2) (a) A notary shall ensure that a signer takes the following oath or makes the
209 following affirmation before the notary witnesses the signature for a jurat:

210 "Do you swear or affirm under penalty of perjury that the statements in your document
211 are true?"

212 (b) An affidavit for a jurat that is in substantially the following form is sufficient under
213 Subsection (1):

214 "State of Utah

215 §

216 County of _____

217 Subscribed and sworn to before me (notary public name), on this (date) day of (month),
218 in the year (year), by (name of document signer).

219 (Notary Seal) _____

220 Notary Signature".

221 (3) An affidavit for an acknowledgment that is in substantially the following form is
222 sufficient under Subsection (1):

223 "State of Utah

224 §

225 County of _____

226 On this (date) day of (month), in the year (year), before me (name of notary public), a
227 notary public, personally appeared (name of document signer), proved on the basis of
228 satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to in this document,
229 and acknowledged (he/she/they) executed the same.

230 (Notary Seal) _____

231 Notary Signature".

232 (4) An affidavit for a copy certification that is in substantially the following form is
233 sufficient under Subsection (1):

234 "State of Utah

235 §

236 County of _____

237 On this (date) day of (month), in the year (year), I certify that the preceding or attached
238 document is a true, exact, and unaltered photocopy of (description of document), and that, to
239 the best of my knowledge, the photocopied document is neither a public record nor a publicly
240 recorded document.

241 (Notary Seal) _____

242 Notary Signature".

243 (5) An affidavit for a signature witnessing that is in substantially the following form is
244 sufficient under Subsection (1):

245 "State of Utah

246 §

247 County of _____

248 On this (date) day of (month), in the year (year), before me, (name of notary public),
249 personally appeared (name of document signer), proved to me through satisfactory evidence of
250 identification, which was (form of identification), to be the person whose name is signed on the
251 preceding or attached document in my presence.

252 (Notary Seal) _____

253 Notary Signature".

254 Section 6. Section **46-1-7** is amended to read:

255 **46-1-7. Disqualifications.**

256 A notary may not perform a notarial act if the notary:

257 (1) is a signer of the document that is to be notarized except in case of a self-proved
258 will as provided in Section [75-2-504](#); [or]

259 (2) is named in the document that is to be notarized except in the case of a:

260 (a) [~~in the case of a~~] self-proved will as provided in Section [75-2-504](#); [or]

261 (b) [~~in the case of a~~] licensed attorney that is listed in the document only as
262 representing a signer or another person named in the document; or

263 (c) licensed escrow agent, as defined in Section [31A-1-301](#), that:

264 (i) acts as the title insurance producer in signing closing documents; and

265 (ii) is not named individually in the closing documents as a grantor, grantee,
266 mortgagor, mortgagee, trustor, trustee, vendor, vendee, lessor, lessee, buyer, or seller;

267 (3) will receive [~~directly~~] direct compensation from a transaction connected with a
268 financial transaction in which the notary is named individually as a principal; or

269 (4) will receive [~~directly~~] direct compensation from a real property transaction in which
270 the notary is named individually as a grantor, grantee, mortgagor, mortgagee, trustor, trustee,
271 beneficiary, vendor, vendee, lessor, [or] lessee, buyer, or seller.

272 Section 7. Section **46-1-15** is amended to read:

273 **46-1-15. Inspection of journal -- Safekeeping and custody of journal.**

- 274 (1) If a notary maintains a journal, the notary shall:
275 ~~[(1) safeguard the journal and all other notarial records as valuable public documents~~
276 ~~and may not destroy the documents; and]~~
277 ~~[(2) keep the journal in the exclusive custody of the notary, not to be used by any other~~
278 ~~notary or surrendered to an employer upon termination of employment.]~~
279 (a) keep the journal in the notary's exclusive custody; and
280 (b) ensure that the journal is not used by any other person for any purpose.
281 (2) The notary's employer may not require the notary to surrender the journal upon
282 termination of the notary's employment.

283 Section 8. Section **46-1-16** is amended to read:

284 **46-1-16. Official signature -- Official seal -- Seal impression.**

- 285 (1) In completing a notarial act, a notary shall sign on the notarial certificate exactly
286 and only the name indicated on the notary's commission.
- 287 (2) (a) A notary shall keep an official notarial seal that is the exclusive property of the
288 notary and that may not be used by any other person.
- 289 (b) Upon the resignation, revocation, or expiration of a notarial commission, ~~[the seal~~
290 ~~shall be destroyed]~~ the notary shall destroy the notary's seal.
- 291 (c) Each notarial seal obtained by a notary ~~[on or after July 1, 2003]~~ shall use purple
292 ink.
- 293 (3) (a) ~~[A new seal shall be obtained for any]~~ A notary shall obtain a new seal:
294 (i) when the notary receives a new commission [or recommission.]; or
295 ~~[(b) A new seal shall be obtained]~~
296 (ii) if the notary changes the notary's name of record at any time during the notary's
297 commission.
- 298 ~~[(c) The]~~ (b) A notary shall affix the seal impression [shall be affixed] near the
299 notary's official signature on a notarial certificate and shall include a sharp, legible, and
300 photographically reproducible ink impression of the notarial seal that consists of:
- 301 (i) the notary public's name exactly as indicated on the notary's commission;
302 (ii) the words "notary public," "state of Utah," and "my commission expires on
303 (commission expiration date)";
304 (iii) ~~[for a notary seal issued on or after July 1, 2008,]~~ the notary's commission number,

305 exactly as indicated on the notary's commission;

306 (iv) a facsimile of the great seal of the state; and

307 (v) a rectangular border no larger than one inch by two and one-half inches surrounding
308 the required words and seal.

309 (4) ~~[A]~~ A notary may use an embossed seal impression that is not photographically
310 reproducible ~~[may be used]~~ in addition to, but not in place of, the photographically
311 reproducible seal required in this section.

312 (5) ~~[The]~~ A notary shall affix the notarial seal ~~[shall be affixed]~~ in a manner that does
313 not obscure or render illegible any information or signatures contained in the document or in
314 the notarial certificate.

315 (6) A notary may not use a notarial seal independent of a notarial certificate.

316 ~~[(6)]~~ (7) ~~[A notary acknowledgment]~~ A notarial certificate on an annexation,
317 subdivision, or other map or plat is considered complete without the imprint of the notary's
318 official seal if:

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

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

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

323 (ii) the words "A notary public commissioned in Utah"; and

324 (iii) the expiration date of the notary's commission.

325 ~~[(7)]~~ (8) ~~[A notary acknowledgment]~~ A notarial certificate on an electronic message or
326 document is considered complete without the imprint of the notary's seal if the following
327 information appears electronically within the message:

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

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

332 Section 9. Section **46-1-18** is amended to read:

333 **46-1-18. Liability.**

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

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

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

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

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

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

347 Section 10. Section **46-1-20** is amended to read:

348 **46-1-20. Change of name or address -- Bond policy rider.**

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

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

352 (b) a bond policy rider that a notary obtains in accordance with Subsection (2).

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

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

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

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

357 (d) destroy the original ["Certificate of Authority of Notary Public";] commission; and
358 ~~[(d) pay a \$5 fee; and]~~

359 (e) destroy the old official seal.

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

362 ~~[(3)]~~ (4) Within 30 days of ~~[a change in the notary's address]~~ the day on which a
363 notary's residential or business address changes, the notary shall provide the notary's new
364 residential or business address to the lieutenant governor.

365 Section 11. Section **46-4-205** is amended to read:

366 **46-4-205. Notarization and acknowledgment.**

367 (1) If a law requires a signature or record to be notarized, acknowledged, verified, or
368 made under oath, the requirement is satisfied by following the procedures and requirements of
369 Subsection ~~46-1-16(7)~~(8).

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

373 Section 12. **Repealer.**

374 This bill repeals:

375 Section ~~46-1-5~~, **Recommissioning.**