

HB0320S01 compared with HB0320

~~deleted text~~ shows text that was in HB0320 but was deleted in HB0320S01.

Inserted text shows text that was not in HB0320 but was inserted into HB0320S01.

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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: _____

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;

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- ▶ 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

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

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

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

46-1-15, as repealed and reenacted by Laws of Utah 1998, Chapter 287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

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

ENACTS:

46-1-6.5, Utah Code Annotated 1953

REPEALS AND REENACTS:

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

REPEALS:

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

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,

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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 that the lieutenant governor issues 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 the notary's presence, a voluntary signature and taken an oath or affirmation vouching for the truthfulness of the signed document.]~~

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

(a) the identity of a signer who:

(i) is personally known to the notary; or

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

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

and

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

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

(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.]~~ the affidavit described in Section 46-1-6.5 that is:

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

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

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

(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.

(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.

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

(11) "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) (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]~~ that the United States government, any state within the United States, or a foreign government issues;

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

(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.

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

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

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

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

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

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

(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.

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

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

(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 maintain permanent residency thereafter];~~

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

(d) 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 nolo contendere;]~~

(i) the individual's:

(A) name as it will appear on the commission;

(B) ~~{in-state}~~ residential address;

(C) ~~{in-state}~~ business address;

(D) daytime telephone number; and

(E) date of birth;

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

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

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

(v) an indication that the individual has passed the examination described in Subsection (5); and

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(vi) payment of an application fee that the lieutenant governor establishes in accordance with Section 63J-1-504; and

~~[(e) be a Utah resident or]~~

(e) (i) be a United States citizen; or

(ii) 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 described in Subsection (5).

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

(b) (i) After an individual's commission expires, the individual may not perform a notarial act until the individual obtains a new commission.

(ii) An individual whose commission expires and who wishes to obtain a new commission shall submit a new application, showing compliance with the requirements of this section.

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

~~(b)~~ The testing center ~~[designated by]~~ that the lieutenant governor designates shall issue a written acknowledgment to the applicant indicating whether the applicant passed or failed the examination.

(6) (a) A notary shall maintain permanent residency in the state during the term of the notary's notarial commission.

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(b) A notary who does not maintain permanent residency under Subsection (6)(a) shall resign the notary's notarial commission in accordance with Section 46-1-21.

Section 3. Section **46-1-4** is amended to read:

46-1-4. Bond.

~~[(1)]~~ A notarial commission ~~[may not become]~~ is not effective until:

(1) the notary named in the commission takes a constitutional oath of office and files a \$5,000 bond [has been filed with and approved by] with the lieutenant governor[-] that:

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

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

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

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

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

46-1-6. Powers and limitations.

(1) A notary may perform the following acts:

(a) a jurat;

(b) an acknowledgment;

(c) a signature witnessing;

~~(fcd)~~ a copy certification; and

~~(fde)~~ an oath or affirmation.

(2) A notary may not:

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

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

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

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

(1) A correctly completed affidavit in substantially the ~~{following form}~~ form

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described in this section, that is included in or attached to a ~~{ notarized }~~ document, is sufficient for the completion of a notarization under this Title 46, Chapter 1, Notaries Public Reform Act~~;~~:

~~(1) ;~~

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

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

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

"State of Utah

§

County of _____

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

(Notary Seal) _____

Notary Signature" ~~{ ; }~~

(~~{2}~~3) An affidavit for an acknowledgment that is in substantially the following form is sufficient under Subsection (1):

"State of Utah

§

County of _____

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

(Notary Seal) _____

Notary Signature" ~~{ ; and }~~

(~~{3}~~4) An affidavit for a copy certification that is in substantially the following form is sufficient under Subsection (1):

"State of Utah

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§

County of _____

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

(Notary Seal) _____

Notary Signature".

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

"State of Utah

§

County of _____

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

(Notary Seal) _____

Notary Signature".

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

46-1-7. Disqualifications.

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

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

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

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

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

(c) licensed escrow agent, as defined in Section 31A-1-301, ~~facting~~ that:

(i) acts as the title insurance producer in signing ~~real property~~ closing documents; and

(ii) is not named individually in the closing documents as a grantor, grantee,

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mortgagor, mortgagee, trustor, trustee, vendor, vendee, lessor, lessee, buyer, or seller;

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

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

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

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

(1) If a notary maintains a journal, the notary shall:

~~[(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.]~~

(a) keep the journal in the notary's exclusive custody; and

(b) ensure that the journal is not used by any other person for any purpose.

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

Section 8. 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.

(b) Upon the resignation, revocation, or expiration of a notarial commission, [~~the seal shall be destroyed~~] the notary shall destroy the notary's seal.

(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~~] A notary shall obtain a new seal:

(i) when the notary receives a new commission [~~or recommission~~]; or

~~[(b) A new seal shall be obtained]~~

(ii) if the notary changes the notary's name of record at any time during the notary's

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commission.

~~[(c) The]~~ (b) A notary shall affix 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) a facsimile of the great seal of the state; and
- (v) a rectangular border no larger than one inch by two and one-half inches surrounding the required words and seal.

(4) ~~[An]~~ A notary may use 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]~~ A notary shall affix 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 may not use a notarial seal independent of a notarial certificate.

~~[(6)]~~ (7) ~~[A notary acknowledgment]~~ A notarial certificate 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 certificate 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)]~~ (8) ~~[A notary acknowledgment]~~ A notarial certificate on an electronic message or document is considered complete without the imprint of the notary's seal if the following information appears electronically within the message:

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(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 9. 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 10. 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 that a notary obtains 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~~[;]~~;

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

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

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(e) 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.

Section 11. 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)]~~(8).

(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 12. **Repealer.**

This bill repeals:

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

†

Legislative Review Note

Office of Legislative Research and General Counsel