

Representative Craig Hall proposes the following substitute bill:

REMOTE NOTARIZATION STANDARDS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig Hall

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill modifies the Notaries Public Reform Act to allow a notarization to be performed remotely.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes requirements for and a process by which the lieutenant governor may certify a notary as a remote notary;
- ▶ establishes requirements for the process by which a remote notary may perform a remote notarization, including standards for:
 - determining an individual's identity; and
 - the equipment, software, and hardware by which a remote notary may perform a remote notarization;
- ▶ grants rulemaking authority to the director of elections in the Office of the Lieutenant Governor;
- ▶ amends the fees a notary may charge for performing a notarization;
- ▶ requires a remote notary to keep an electronic journal, including an audio and video recording, of each notarization the remote notary performs;



- 26 ▶ amends provisions related to the security, maintenance, and custody of a notary's
- 27 journal;
- 28 ▶ amends provisions related to the obtaining, use, surrendering, and destruction of a
- 29 notary's official seal; and
- 30 ▶ makes technical and conforming changes.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 This bill provides a special effective date.

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37 46-1-2, as last amended by Laws of Utah 2017, Chapter 259
- 38 46-1-3, as last amended by Laws of Utah 2017, Chapter 259
- 39 46-1-4, as last amended by Laws of Utah 2017, Chapter 259
- 40 46-1-6, as repealed and reenacted by Laws of Utah 2017, Chapter 259
- 41 46-1-6.5, as enacted by Laws of Utah 2017, Chapter 259
- 42 46-1-10, as repealed and reenacted by Laws of Utah 1998, Chapter 287
- 43 46-1-12, as last amended by Laws of Utah 1998, Chapter 287
- 44 46-1-13, as repealed and reenacted by Laws of Utah 1998, Chapter 287
- 45 46-1-14, as last amended by Laws of Utah 2006, Chapter 21
- 46 46-1-15, as last amended by Laws of Utah 2017, Chapter 259
- 47 46-1-16, as last amended by Laws of Utah 2017, Chapter 259
- 48 46-1-17, as repealed and reenacted by Laws of Utah 1998, Chapter 287
- 49 46-1-18, as last amended by Laws of Utah 2017, Chapter 259
- 50 46-1-21, as last amended by Laws of Utah 2003, Chapter 136
- 51 53-10-108, as last amended by Laws of Utah 2018, Chapters 417 and 427

52 ENACTS:

- 53 46-1-3.5, Utah Code Annotated 1953
- 54 46-1-3.6, Utah Code Annotated 1953
- 55 46-1-3.7, Utah Code Annotated 1953

56

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

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

59 **46-1-2. Definitions.**

60 As used in this chapter:

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

65 (2) "Before me" means that an individual appears in the presence of the notary.

66 [~~(2)~~] (3) "Commission" means:

67 (a) to empower to perform notarial acts; or

68 (b) the written document that gives authority to perform notarial acts, including the
69 Certificate of Authority of Notary Public that the lieutenant governor issues to a notary.

70 [~~(3)~~] (4) "Copy certification" means a notarial act in which a notary certifies that a
71 photocopy is an accurate copy of a document that is neither a public record nor publicly
72 recorded.

73 (5) "Electronic recording" means the audio and video recording, described in
74 Subsection 46-1-3.6(3), of a remote notarization.

75 (6) "Electronic seal" means an electronic version of the seal described in Section
76 46-1-16, that conforms with rules made under Subsection 46-1-3.7(1)(d), that a remote notary
77 may attach to a notarial certificate to complete a remote notarization.

78 [~~(4)~~] (7) "Electronic signature" means the same as that term is defined in Section
79 46-4-102.

80 (8) "In the presence of the notary" means that an individual:

81 (a) is physically present with the notary in close enough proximity to see and hear the
82 notary; or

83 (b) communicates with a remote notary by means of an electronic device or process
84 that:

85 (i) allows the individual and remote notary to communicate with one another
86 simultaneously by sight and sound; and

87 (ii) complies with rules made under Section 46-1-3.7.

88 ~~[(5)]~~ (9) "Jurat" means a notarial act in which a notary certifies:

89 (a) the identity of a signer who:

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

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

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

93 and

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

95 ~~[(6)]~~ (10) "Notarial act" or "notarization" means an act that a notary is authorized to

96 perform under Section [46-1-6](#).

97 ~~[(7)]~~ (11) "Notarial certificate" means the affidavit described in Section [46-1-6.5](#) that

98 is:

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

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

101 ~~[(8)]~~ (12) (a) "Notary" means ~~[any person]~~ an individual commissioned to perform

102 notarial acts under this chapter.

103 (b) "Notary" includes a remote notary.

104 ~~[(9)]~~ (13) "Oath" or "affirmation" means a notarial act in which a notary certifies that a

105 person made a vow or affirmation in the presence of the notary on penalty of perjury.

106 ~~[(10)]~~ (14) "Official misconduct" means a notary's performance of any act prohibited or

107 failure to perform any act mandated by this chapter or by any other law in connection with a

108 notarial act.

109 (15) (a) "Official seal" means the seal described in Section [46-1-16](#) that a notary may

110 attach to a notarial certificate to complete a notarization.

111 (b) "Official seal" includes an electronic seal.

112 ~~[(11)]~~ (16) "Personally known" means familiarity with an individual resulting from

113 interactions with that individual over a period of time sufficient to eliminate every reasonable

114 doubt that the individual has the identity claimed.

115 (17) "Remote notarization" means a notarial act performed by a remote notary in

116 accordance with this chapter for an individual who is not in the physical presence of the remote

117 notary at the time the remote notary performs the notarial act.

118 (18) "Remote notary" means a notary that holds an active remote notary certification

119 under Section 46-1-3.5.

120 ~~[(12)]~~ (19) (a) "Satisfactory evidence of identity" means:

121 (i) for both an in-person and remote notarization, identification of an individual based
122 on:

123 [(i)] (A) subject to Subsection (19)(b), valid personal identification with the
124 individual's photograph, signature, and physical description that the United States government,
125 any state within the United States, or a foreign government issues;

126 [(ii)] (B) subject to Subsection (19)(b), a valid passport that any nation issues; or

127 [(iii)] (C) the oath or affirmation of a credible person who is personally known to the
128 notary and who personally knows the individual~~[-]; and~~

129 (ii) for a remote notarization only, a third party's affirmation of an individual's identity
130 in accordance with rules made under Section 46-1-3.7 by means of:

131 (A) dynamic knowledge-based authentication, which may include requiring the
132 individual to answer questions about the individual's personal information obtained from
133 public or proprietary data sources; or

134 (B) analysis of the individual's biometric data, which may include facial recognition,
135 voiceprint analysis, or fingerprint analysis.

136 (b) "Satisfactory evidence of identity," for a remote notarization, requires the
137 identification described in Subsection (19)(a)(i)(A) or passport described in Subsection
138 (19)(a)(i)(B) to be verified through public or proprietary data sources in accordance with rules
139 made under Section 46-1-3.7.

140 ~~[(b)]~~ (c) "Satisfactory evidence of identity" does not include:

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

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

143 ~~[(13)]~~ (20) "Signature witnessing" means a notarial act in which an individual:

144 (a) appears in ~~[person before a]~~ the presence of the notary and presents a document;

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

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

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

149 **46-1-3. Qualifications -- Application for notarial commission required -- Term.**

150 (1) Except as provided in Subsection [~~(3)~~] (4), and subject to Section [46-1-3.5](#), the
151 lieutenant governor shall commission as a notary any qualified person who submits an
152 application in accordance with this chapter.

153 (2) To qualify for a notarial commission an individual shall:

154 (a) be at least 18 years old;

155 (b) lawfully reside in the state for at least 30 days immediately before the individual
156 applies for a notarial commission;

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

158 (d) submit an application to the lieutenant governor containing no significant
159 misstatement or omission of fact, that includes:

160 (i) the individual's:

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

162 (B) residential address;

163 (C) business address;

164 (D) daytime telephone number; and

165 (E) date of birth;

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

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

169 (iv) all issuances, denials, revocations, suspensions, restrictions, and resignations of a
170 notarial commission or other professional license involving the applicant in this or any other
171 state;

172 (v) an indication that the individual has passed the examination described in
173 Subsection [~~(5)~~] (6); and

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

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

177 (ii) have permanent resident status under Section 245 of the Immigration and
178 Nationality Act[~~;~~]; and

179 (f) submit to a background check described in Subsection (3).

180 (3) (a) The lieutenant governor shall:

181 (i) request the Department of Human Resource Management to perform a criminal
182 background check under Subsection 53-10-108(16) on each individual who submits an
183 application under this section;

184 (ii) require an individual who submits an application under this section to provide a
185 signed waiver on a form provided by the lieutenant governor that complies with Subsection
186 53-10-108(4); and

187 (iii) provide the Department of Human Resource Management the personal identifying
188 information of each individual who submits an application under this section.

189 (b) The Department of Human Resource Management shall:

190 (i) perform a criminal background check under Subsection 53-10-108(16) on each
191 individual described in Subsection (3)(a)(i); and

192 (ii) provide to the lieutenant governor all information that pertains to the individual
193 described in Subsection (3)(a)(i) that the department identifies or receives as a result of the
194 background check.

195 [~~3~~] (4) The lieutenant governor may deny an application based on:

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

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

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

200 (d) the applicant's failure to pass the examination described in Subsection [~~5~~] (6).

201 [~~4~~] (5) (a) An individual whom the lieutenant governor commissions as a notary;

202 (i) may perform notarial acts in any part of the state for a term of four years, unless the
203 person resigns or the commission is revoked or suspended under Section 46-1-19[-]; and

204 (ii) except through a remote notarization performed in accordance with this chapter,
205 may not perform a notarial act for another individual who is outside of the state.

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

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

211 [~~5~~] (6) (a) Each applicant for a notarial commission shall take an examination that the

212 lieutenant governor approves and submit the examination to a testing center that the lieutenant
213 governor designates for purposes of scoring the examination.

214 (b) The testing center that the lieutenant governor designates shall issue a written
215 acknowledgment to the applicant indicating whether the applicant passed or failed the
216 examination.

217 ~~[(6)]~~ (7) (a) A notary shall maintain permanent residency in the state during the term of
218 the notary's notarial commission.

219 (b) A notary who does not maintain permanent residency under Subsection ~~[(6)]~~ (7)(a)
220 shall resign the notary's notarial commission in accordance with Section 46-1-21.

221 Section 3. Section 46-1-3.5 is enacted to read:

222 **46-1-3.5. Remote notary qualifications -- Application -- Authority.**

223 (1) An individual commissioned as a notary, or an individual applying to be
224 commissioned as a notary, under Section 46-1-3 may apply to the lieutenant governor for a
225 remote notary certification under this section.

226 (2) The lieutenant governor shall certify an individual to perform remote notarizations
227 as a remote notary if the individual:

228 (a) complies with Section 46-1-3 to become a commissioned notary;

229 (b) submits to the lieutenant governor, on a form created by the lieutenant governor, a
230 correctly completed application for a remote notary certification; and

231 (c) pays to the lieutenant governor the application fee described in Subsection (4).

232 (3) The lieutenant governor shall ensure that the application described in Subsection
233 (2)(b) requires an applicant to:

234 (a) list the applicant's name as it appears or will appear on the applicant's notarial
235 commission;

236 (b) agree to comply with the provisions of this chapter, and rules made under Section
237 46-1-3.7, that relate to a remote notarization; and

238 (c) provide the applicant's email address.

239 (4) The lieutenant governor may establish and charge a fee in accordance with Section
240 63J-1-504 to an individual who seeks to obtain remote notary certification under this section.

241 Section 4. Section 46-1-3.6 is enacted to read:

242 **46-1-3.6. Remote notarization procedures.**

243 (1) A remote notary who receives a remote notary certification under Section 46-1-3.5
244 may perform a remote notarization if the remote notary is physically located in this state.

245 (2) A remote notary that performs a remote notarization for an individual that is not
246 personally known to the remote notary shall, at the time the remote notary performs the remote
247 notarization, establish satisfactory evidence of identity for the individual by:

248 (a) communicating with the individual using an electronic device or process that:

249 (i) allows the individual and remote notary to communicate with one another
250 simultaneously by sight and sound; and

251 (ii) complies with rules made under Section 46-1-3.7; and

252 (b) requiring the individual to transmit to the remote notary an image of a form of
253 identification described in Subsection 46-1-2(17)(a)(i)(A) or passport described in Subsection
254 46-1-2(17)(a)(i)(B) that is of sufficient quality for the remote notary to establish satisfactory
255 evidence of identity.

256 (3) A remote notary shall create an audio and video recording of the performance of
257 each remote notarization and store the recording in accordance with Sections 46-1-14 and
258 46-1-15.

259 (4) Notwithstanding any other provision of law, a remote notarization lawfully
260 performed under this chapter satisfies any provision of state law that requires an individual to
261 personally appear before, or be in the presence of, a notary at the time the notary performs a
262 notarial act.

263 Section 5. Section 46-1-3.7 is enacted to read:

264 **46-1-3.7. Rulemaking authority for remote notarization.**

265 (1) The director of elections in the Office of the Lieutenant Governor may make rules
266 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding
267 standards for and types of:

268 (a) electronic software and hardware that a remote notary may use to:

269 (i) perform a remote notarization; and

270 (ii) keep an electronic journal under Section 46-1-13;

271 (b) public and proprietary data sources that a remote notary may use to establish
272 satisfactory evidence of identity under Subsection 46-1-2(17)(b);

273 (c) dynamic knowledge-based authentication or biometric data analysis that a remote

274 notary may use to establish satisfactory evidence of identity under Subsection 46-1-2(17)(a)(ii);
275 and

276 (d) electronic seals a remote notary may use to complete an electronic notarial
277 certificate.

278 (2) When making a rule under this section, the director of elections in the Office of the
279 Lieutenant Governor shall review and consider standards recommended by one or more
280 national organizations that address the governance or operation of notaries.

281 Section 6. Section 46-1-4 is amended to read:

282 **46-1-4. Bond.**

283 (1) A notarial commission is not effective until:

284 ~~[(1)]~~ (a) the notary named in the commission takes a constitutional oath of office and
285 files a \$5,000 bond with the lieutenant governor that:

286 ~~[(a)]~~ (i) a licensed surety executes for a term of four years beginning on the
287 commission's effective date and ending on the commission's expiration date; and

288 ~~[(b)]~~ (ii) conditions payment of bond funds to any person upon the notary's misconduct
289 while acting in the scope of the notary's commission; and

290 ~~[(2)]~~ (b) the lieutenant governor approves the oath and bond [are approved by the
291 lieutenant governor] described in Subsection (1)(a).

292 (2) In addition to the requirements described in Subsection (1), a remote notary
293 certification described in Section 46-1-3.5 is not effective until:

294 (a) the notary named in the remote notary certification files with the lieutenant
295 governor evidence that the notary has obtained \$5,000 of bond coverage, in addition to the
296 bond coverage described in Subsection (1)(a), that:

297 (i) a licensed surety executes for a term that begins on the certification's effective date
298 and ends on the remote notary's commission's expiration date; and

299 (ii) conditions payment of bond funds to any person upon the remote notary's
300 misconduct while acting in the scope of the remote notary's commission; and

301 (b) the lieutenant governor approves the additional bond coverage described in
302 Subsection (2)(a).

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

304 **46-1-6. Powers and limitations.**

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

306 (a) a jurat;

307 (b) an acknowledgment;

308 (c) a signature witnessing;

309 (d) a copy certification; and

310 (e) an oath or affirmation.

311 (2) A notary may not:

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

313 (b) perform an act described in Subsection (1) if the [person] individual for whom the

314 notary performs the notarial act is not in the [physical] presence of the notary at the time the

315 notary performs the act.

316 Section 8. Section **46-1-6.5** is amended to read:

317 **46-1-6.5. Form of notarial certificate for document notarizations.**

318 (1) A correctly completed affidavit in substantially the form described in this section,

319 that is included in or attached to a document, is sufficient for the completion of a notarization

320 under this Title 46, Chapter 1, Notaries Public Reform Act.

321 (2) (a) A notary shall ensure that a signer takes the following oath or makes the

322 following affirmation before the notary witnesses the signature for a jurat:

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

324 are true?"

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

326 Subsection (1):

327 "State of Utah

328 §

329 County of _____

330 Subscribed and sworn to before me (notary public name), on this (date) day of (month),

331 in the year (year), by (name of document signer).

332 (~~Notary~~ Notary's Official Seal) _____

333 Notary Signature".

334 (3) An affidavit for an acknowledgment that is in substantially the following form is

335 sufficient under Subsection (1):

336 "State of Utah

337 §

338 County of _____

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

343 ([Notary] Notary's Official Seal) _____

344 Notary Signature".

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

347 "State of Utah

348 §

349 County of _____

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

354 ([Notary] Notary's Official Seal) _____

355 Notary Signature".

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

358 "State of Utah

359 §

360 County of _____

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

365 ([Notary] Notary's Official Seal) _____

366 Notary Signature".

367 (6) A remote notary shall ensure that the notarial certificate described in this section
368 that is used for a remote notarization includes a statement that the remote notary performed the
369 notarization remotely.

370 Section 9. Section **46-1-10** is amended to read:

371 **46-1-10. Testimonials prohibited.**

372 A notary may not use the notary's title or official seal to endorse or promote any
373 product, service, contest, or other offering [if the notary's title or seal is used in the
374 endorsement or promotional statement].

375 Section 10. Section **46-1-12** is amended to read:

376 **46-1-12. Fees and notice.**

377 (1) ~~(a) [The maximum fees that may be charged by a notary]~~ Except as provided in
378 Subsection (1)(b), the maximum fees a notary may charge for notarial acts are [for]:

379 ~~[(a)] (i) [acknowledgments, \$5]~~ for an acknowledgment, \$10 per signature;

380 ~~[(b)] (ii) [certified copies, \$5]~~ for a certified copy, \$10 per page certified;

381 ~~[(c)] (iii) [jurats, \$5]~~ for a jurat, \$10 per signature; [and]

382 ~~[(d)] (iv) [oaths or affirmations]~~ for an oath or affirmation without a signature, [\$5]
383 \$10 per person[-]; and

384 (v) for each signature witnessing, \$10.

385 (b) The maximum fee a remote notary may charge for an item described in Subsection
386 (1)(a) that the remote notary performs as a part of a remote notarization is \$25.

387 (2) A notary may charge a travel fee, not to exceed the approved federal mileage rate,
388 when traveling to perform a notarial act if:

389 (a) the notary explains to the person requesting the notarial act that the travel fee is
390 separate from the notarial fee in Subsection (1) and is neither specified nor mandated by law;
391 and

392 (b) the notary and the person requesting the notarial act agree upon the travel fee in
393 advance.

394 (3) A notary shall display an English-language schedule of fees for notarial acts and
395 may display a nonEnglish-language schedule of fees.

396 (4) (a) ~~[The fee of a notary shall not exceed \$5]~~ A notary may not charge a fee of more
397 than \$10 per individual for each set of forms relating to a change of that individual's

398 immigration status.

399 (b) The fee limitation described in Subsection (4)(a) [~~shall apply whether or not~~
400 applies regardless of whether the notary is acting as a notary but does not apply to a licensed
401 attorney, who is also a notary rendering professional services regarding immigration matters.

402 Section 11. Section **46-1-13** is amended to read:

403 **46-1-13. Notary journal.**

404 (1) A notary may keep, maintain, and protect as a public record, and provide for lawful
405 inspection a chronological, permanently bound official journal of notarial acts, containing
406 numbered pages.

407 (2) A remote notary shall keep a secure electronic journal of each remote notarization
408 the notary performs.

409 Section 12. Section **46-1-14** is amended to read:

410 **46-1-14. Entries in journal -- Required information.**

411 (1) [~~For every notarial act, the notary may~~] A notary may, for each notarial act the
412 notary performs, and a remote notary shall, for each notarial act the remote notary performs
413 remotely, record the following information in the journal described in Section 46-1-13 at the
414 time of notarization:

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

416 (b) the type of notarial act;

417 (c) [~~a~~] the type title, or a description of the document, electronic record, or proceeding
418 that is the subject of the notarial act;

419 (d) the signature and printed name and address of each [~~person~~] individual for whom a
420 notarial act is performed;

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

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

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

426 [~~or~~]

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

429 (iv) if used for a remote notarization, a description of the dynamic knowledge-based
430 authentication or biometric data analysis that was used to provide satisfactory evidence of
431 identity under Subsection 46-1-2(17)(a)(ii); and

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

433 (2) A notary may record in the journal a description of the circumstances [~~in refusing~~]
434 under which the notary refused to perform or complete a notarial act.

435 (3) (a) A remote notary shall include with the journal a copy of the electronic recording
436 of the remote notarization.

437 (b) The electronic recording is not a public record and is not a part of the notary's
438 journal.

439 (4) A remote notary shall maintain, or ensure that a person that the notary designates as
440 a custodian under Subsection 46-1-15(2)(b)(i) maintains, for a period of five years, the
441 information described in Subsections (1) and (3) for each remote notarization the notary
442 performs.

443 Section 13. Section **46-1-15** is amended to read:

444 **46-1-15. Inspection of journal -- Safekeeping and custody of journal.**

445 (1) [Hf] Except as provided in Subsection (2)(b), if a notary maintains a journal, the
446 notary shall:

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

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

449 (2) (a) A remote notary shall:

450 (i) ensure that the electronic journal and electronic recording described in Section
451 46-1-14 that is maintained by the remote notary is a secure and authentic record of the remote
452 notarizations that the notary performs;

453 (ii) maintain a backup electronic journal and electronic recording; and

454 (iii) protect the backup electronic journal and electronic recording described in
455 Subsection (2)(a)(ii) from unauthorized access or use.

456 (b) (i) A remote notary may designate as a custodian of the remote notary's electronic
457 journal and electronic recording described in Section 46-1-14:

458 (A) subject to Subsection (3), the remote notary's employer that employs the remote
459 notary to perform notarizations; or

460 (B) except as provided in Subsection (2)(b)(iii), an electronic repository that grants the
461 remote notary sole access to the electronic journal and electronic recording and does not allow
462 the person who operates the electronic repository or any other person to access the journal,
463 information in the journal, or the electronic recording for any purpose.

464 (ii) A remote notary that designates a custodian under Subsection (2)(b)(i) shall
465 execute an agreement with the custodian that requires the custodian to comply with the safety
466 and security requirements of this chapter with regard to the electronic journal, the information
467 in the electronic journal, and the electronic recording.

468 (iii) An electronic repository described in Subsection (2)(b)(i)(B) may access an
469 electronic journal, information contained in an electronic journal, and the electronic recording:

470 (A) for a purpose solely related to completing, in accordance with this chapter, the
471 notarization for which the journal or information in the journal is accessed;

472 (B) for a purpose solely related to complying with the requirements to retain and store
473 records under this chapter; or

474 (C) if required under a court order.

475 ~~[(2)]~~ (3) The notary's employer may not require the notary to surrender the journal or
476 the electronic recording upon termination of the notary's employment.

477 Section 14. Section **46-1-16** is amended to read:

478 **46-1-16. Official signature -- Official seal -- Destruction of seal -- Unlawful use of**
479 **seal -- Criminal penalties.**

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

482 (2) (a) ~~[(A)]~~ Except as provided in Subsection (2)(d), a notary shall keep an official
483 [notarial] seal, and a remote notary shall keep an electronic seal and electronic signature, that is
484 the exclusive property of the notary [and that].

485 (b) Except as provided in Subsection (2)(d), a notary's official seal, electronic seal, or
486 electronic signature may not be used by any other person.

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

489 (c) (i) ~~Each [notarial seal obtained by a notary shall use purple ink]~~ official seal used
490 for an in-person notarization shall be in purple ink.

- 491 (ii) Each official seal used for a remote notarization shall be rendered in black.
- 492 (d) (i) A remote notary may allow a person that provides an electronic seal to the
- 493 remote notary under Section 46-1-17 to act as guardian over the electronic seal.
- 494 (ii) Except as provided in Subsection (2)(d)(iii), a guardian described in Subsection
- 495 (2)(d)(i) shall store the seal in a secure manner that prevents any person from:
- 496 (A) accessing the seal, other than the guardian and the remote notary named on the
- 497 seal; or
- 498 (B) using the seal to perform a notarization, other than the remote notary named on the
- 499 seal.
- 500 (iii) A guardian that a notary designates under Subsection (2)(d)(i) may access and use
- 501 the seal of the notary:
- 502 (A) for a purpose solely related to completing, in accordance with this chapter, the
- 503 notarization, by the notary, for which the seal is accessed or used;
- 504 (B) for a purpose solely related to complying with the requirements to obtain, store,
- 505 and protect the seal under this chapter; or
- 506 (C) if required under a court order.
- 507 (3) (a) A notary shall obtain a new official seal:
- 508 (i) when the notary receives a new commission; or
- 509 (ii) if the notary changes the notary's name of record at any time during the notary's
- 510 commission.
- 511 (b) ~~[A]~~ Subject to Subsection (3)(c), a notary shall affix the official seal [~~impression~~
- 512 near the notary's official signature on a notarial certificate and shall include a sharp, legible,
- 513 and photographically reproducible [~~ink impression of the notarial~~ rendering of the official seal
- 514 that consists of:
- 515 (i) the notary public's name exactly as indicated on the notary's commission;
- 516 (ii) the words "notary public," "state of Utah," and "my commission expires on
- 517 (commission expiration date)";
- 518 (iii) the notary's commission number, exactly as indicated on the notary's commission;
- 519 (iv) a facsimile of the great seal of the state; and
- 520 (v) a rectangular border no larger than one inch by two and one-half inches surrounding
- 521 the required words and official seal.

522 (c) When performing a remote notarization, a remote notary shall attach the remote
523 notary's electronic signature and electronic seal under Subsection (3)(b) to an electronic
524 notarial certificate in a manner that makes evident any subsequent change or modification to:

525 (i) the notarial certificate; or

526 (ii) any electronic record, that is a part of the notarization, to which the notarial
527 certificate is attached.

528 (4) A notary may use an embossed seal impression that is not photographically
529 reproducible in addition to, but not in place of, the photographically reproducible official seal
530 required in this section.

531 (5) A notary shall affix the [~~notarial~~] official seal in a manner that does not obscure or
532 render illegible any information or signatures contained in the document or in the notarial
533 certificate.

534 (6) A notary may not use [~~a notarial~~] an official seal independent of a notarial
535 certificate.

536 (7) [~~A~~] Except for a notarial certificate that is completed as a part of a remote
537 notarization, a notarial certificate on an annexation, subdivision, or other map or plat is
538 considered complete without the imprint of the notary's official seal if:

539 (a) the notary signs the notarial certificate in permanent ink; and

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

541 (i) the notary's name and commission number appears exactly as indicated on the
542 notary's commission;

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

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

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

548 (a) the notary's name and commission number appearing exactly as indicated on the
549 notary's commission; and

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

552 (9) (a) When a notary resigns or the notary's commission expires or is revoked, the

553 notary shall:

554 (i) destroy the notary's official seal and certificate; and

555 (ii) if the notary is a remote notary, destroy any coding, disk, certificate, card, software,
556 or password that enables the remote notary to affix the remote notary's electronic signature or
557 electronic seal to a notarial certificate.

558 (b) A former remote notary shall certify to the lieutenant governor in writing that the
559 former remote notary has complied with Subsection (9)(a)(ii) within 10 days after the day on
560 which the notary resigns or the notary's commission expires or is revoked.

561 (10) (a) A person who, without authorization, knowingly obtains, conceals, damages,
562 or destroys the certificate, disk, coding, card, program, software, or hardware enabling a remote
563 notary to affix an official electronic signature or electronic seal to an electronic record is guilty
564 of a class A misdemeanor.

565 (b) A remote notary shall immediately notify the lieutenant governor if the notary
566 becomes aware that the notary's electronic signature, electronic seal, electronic journal, or
567 information from the journal has been lost, stolen, or used unlawfully.

568 Section 15. Section **46-1-17** is amended to read:

569 **46-1-17. Obtaining official seal.**

570 (1) A [~~vendor~~] person may not provide [~~a notarial seal, either inking or embossing, to a~~
571 ~~person~~] an official seal to an individual claiming to be a notary, unless the [~~person presents a~~
572 ~~photocopy of the person's~~] individual presents a copy of the individual's notarial commission,
573 attached to a notarized declaration substantially as follows:

574 Application for [~~Notary~~] Notary's Official Seal

575 I, _____ (name of [~~person~~] individual requesting seal), declare that I am
576 a notary public duly commissioned by the state of Utah with a commission starting date of
577 _____, a commission expiration date of _____, and a commission number of
578 _____. As evidence, I attach to this [~~paper a photocopy~~] statement a copy of my
579 commission.

580 (2) (a) Except as provided in Subsection (2)(b), an individual may not create, obtain, or
581 possess an electronic seal unless the individual is a remote notary.

582 (b) A person is not guilty of a violation of Subsection (2)(a) if the person is a business
583 that creates, obtains, or possesses an electronic seal for the sole purpose of providing the

584 electronic seal to a certified remote notary.

585 [~~2~~] (3) A [~~vendor~~] person who provides [~~a notarial~~], creates, obtains, or possesses an
586 official seal in violation of this section is guilty of a class [B] A misdemeanor.

587 Section 16. Section **46-1-18** is amended to read:

588 **46-1-18. Liability.**

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

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

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

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

599 (a) a notary to violate a provision of this chapter; or

600 (b) the employer of a notary to solicit the notary to violate a provision of this chapter.

601 Section 17. Section **46-1-21** is amended to read:

602 **46-1-21. Resignation.**

603 (1) A notary who resigns a notarial commission shall provide to the lieutenant
604 governor a notice indicating the effective date of resignation.

605 (2) A notary who ceases to reside in this state or who becomes unable to read and write
606 as provided in Section **46-1-3** shall resign the commission.

607 (3) A notary who resigns shall destroy the official seal and certificate in accordance
608 with Subsection **46-1-16**(9).

609 Section 18. Section **53-10-108** is amended to read:

610 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**
611 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**
612 **-- Missing children records -- Penalty for misuse of records.**

613 (1) As used in this section:

614 (a) "FBI Rap Back System" means the rap back system maintained by the Federal

615 Bureau of Investigation.

616 (b) "Rap back system" means a system that enables authorized entities to receive
617 ongoing status notifications of any criminal history reported on individuals whose fingerprints
618 are registered in the system.

619 (c) "WIN Database" means the Western Identification Network Database that consists
620 of eight western states sharing one electronic fingerprint database.

621 (2) Dissemination of information from a criminal history record, including information
622 obtained from a fingerprint background check, name check, warrant of arrest information, or
623 information from division files, is limited to:

624 (a) criminal justice agencies for purposes of administration of criminal justice and for
625 employment screening by criminal justice agencies;

626 (b) (i) agencies or individuals pursuant to a specific agreement with a criminal justice
627 agency to provide services required for the administration of criminal justice;

628 (ii) the agreement shall specifically authorize access to data, limit the use of the data to
629 purposes for which given, and ensure the security and confidentiality of the data;

630 (c) a qualifying entity for employment background checks for their own employees and
631 persons who have applied for employment with the qualifying entity;

632 (d) noncriminal justice agencies or individuals for any purpose authorized by statute,
633 executive order, court rule, court order, or local ordinance;

634 (e) agencies or individuals for the purpose of obtaining required clearances connected
635 with foreign travel or obtaining citizenship;

636 (f) agencies or individuals for the purpose of a preplacement adoptive study, in
637 accordance with the requirements of Sections [78B-6-128](#) and [78B-6-130](#);

638 (g) private security agencies through guidelines established by the commissioner for
639 employment background checks for their own employees and prospective employees;

640 (h) state agencies for the purpose of conducting a background check for the following
641 individuals:

642 (i) employees;

643 (ii) applicants for employment;

644 (iii) volunteers; and

645 (iv) contract employees;

646 (i) governor's office for the purpose of conducting a background check on the
647 following individuals:
648 (i) cabinet members;
649 (ii) judicial applicants; and
650 (iii) members of boards, committees, and commissions appointed by the governor;
651 (j) the office of the lieutenant governor for the purpose of conducting a background
652 check on an individual applying to be a notary public under Section 46-1-3.

653 ~~[(j)]~~ (k) agencies and individuals as the commissioner authorizes for the express
654 purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal
655 justice agency; and

656 ~~[(k)]~~ (l) other agencies and individuals as the commissioner authorizes and finds
657 necessary for protection of life and property and for offender identification, apprehension, and
658 prosecution pursuant to an agreement.

659 (3) An agreement under Subsection (2)~~[(j)]~~(k) shall specifically authorize access to
660 data, limit the use of data to research, evaluative, or statistical purposes, preserve the
661 anonymity of individuals to whom the information relates, and ensure the confidentiality and
662 security of the data.

663 (4) (a) Before requesting information, a qualifying entity under Subsection (2)(c), state
664 agency, or other agency or individual described in Subsections (2)(d) through ~~[(j)]~~ (j) shall
665 obtain a signed waiver from the person whose information is requested.

666 (b) The waiver shall notify the signee:

- 667 (i) that a criminal history background check will be conducted;
- 668 (ii) who will see the information; and
- 669 (iii) how the information will be used.

670 (c) A qualifying entity under Subsection (2)(c), state agency, or other agency or
671 individual described in Subsections (2)(d) through (g) that submits a request for a noncriminal
672 justice name based background check of local databases to the bureau shall provide to the
673 bureau:

- 674 (i) personal identifying information for the subject of the background check; and
 - 675 (ii) the fee required by Subsection (15)~~[(a)]~~(ii).
- 676 (d) A qualifying entity under Subsection (2)(c), state agency, or other agency or

677 individual described in Subsections (2)(d) through (g) that submits a request for a WIN
678 database check to the bureau shall provide to the bureau:

679 (i) personal identifying information for the subject of the background check;

680 (ii) a fingerprint card for the subject of the background check; and

681 (iii) the fee required by Subsection (15)[(a)(†)].

682 (e) Information received by a qualifying entity under Subsection (2)(c), state agency, or
683 other agency or individual described in Subsections (2)(d) through [(†)] (j) may only be:

684 (i) available to individuals involved in the hiring or background investigation of the job
685 applicant [or] employee, or notary applicant;

686 (ii) used for the purpose of assisting in making an employment appointment, selection,
687 or promotion decision or for considering a notary applicant under Section 46-1-3; and

688 (iii) used for the purposes disclosed in the waiver signed in accordance with Subsection
689 (4)(b).

690 (f) An individual who disseminates or uses information obtained from the division
691 under Subsections (2)(c) through [(†)] (j) for purposes other than those specified under
692 Subsection (4)(e), in addition to any penalties provided under this section, is subject to civil
693 liability.

694 (g) A qualifying entity under Subsection (2)(c), state agency, or other agency or
695 individual described in Subsections (2)(d) through [(†)] (j) that obtains background check
696 information shall provide the subject of the background check an opportunity to:

697 (i) review the information received as provided under Subsection (9); and

698 (ii) respond to any information received.

699 (h) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
700 division may make rules to implement this Subsection (4).

701 (i) The division or its employees are not liable for defamation, invasion of privacy,
702 negligence, or any other claim in connection with the contents of information disseminated
703 under Subsections (2)(c) through [(†)] (j).

704 (5) (a) Any criminal history record information obtained from division files may be
705 used only for the purposes for which it was provided and may not be further disseminated,
706 except under Subsection (5)(b), (c), or (d).

707 (b) A criminal history provided to an agency pursuant to Subsection (2)(f) may be

708 provided by the agency to the individual who is the subject of the history, another licensed
709 child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an
710 adoption.

711 (c) A criminal history of a defendant provided to a criminal justice agency under
712 Subsection (2)(a) may also be provided by the prosecutor to a defendant's defense counsel,
713 upon request during the discovery process, for the purpose of establishing a defense in a
714 criminal case.

715 (d) A public transit district, as described in Title 17B, Chapter 2a, Part 8, Public
716 Transit District Act, that is under contract with a state agency to provide services may, for the
717 purposes of complying with Subsection 62A-5-103.5(5), provide a criminal history record to
718 the state agency or the agency's designee.

719 (6) The division may not disseminate criminal history record information to qualifying
720 entities under Subsection (2)(c) regarding employment background checks if the information is
721 related to charges:

- 722 (a) that have been declined for prosecution;
- 723 (b) that have been dismissed; or
- 724 (c) regarding which a person has been acquitted.

725 (7) (a) This section does not preclude the use of the division's central computing
726 facilities for the storage and retrieval of criminal history record information.

727 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by
728 unauthorized agencies or individuals.

729 (8) Direct access through remote computer terminals to criminal history record
730 information in the division's files is limited to those agencies authorized by the commissioner
731 under procedures designed to prevent unauthorized access to this information.

732 (9) (a) The commissioner shall establish procedures to allow an individual right of
733 access to review and receive a copy of the individual's criminal history report.

734 (b) A processing fee for the right of access service, including obtaining a copy of the
735 individual's criminal history report under Subsection (9)(a) shall be set in accordance with
736 Section 63J-1-504.

737 (c) (i) The commissioner shall establish procedures for an individual to challenge the
738 completeness and accuracy of criminal history record information contained in the division's

739 computerized criminal history files regarding that individual.

740 (ii) These procedures shall include provisions for amending any information found to
741 be inaccurate or incomplete.

742 (10) The private security agencies as provided in Subsection (2)(g):

743 (a) shall be charged for access; and

744 (b) shall be registered with the division according to rules made by the division under
745 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

746 (11) Before providing information requested under this section, the division shall give
747 priority to criminal justice agencies needs.

748 (12) (a) It is a class B misdemeanor for a person to knowingly or intentionally access,
749 use, disclose, or disseminate a record created, maintained, or to which access is granted by the
750 division or any information contained in a record created, maintained, or to which access is
751 granted by the division for a purpose prohibited or not permitted by statute, rule, regulation, or
752 policy of a governmental entity.

753 (b) A person who discovers or becomes aware of any unauthorized use of records
754 created or maintained, or to which access is granted by the division shall inform the
755 commissioner and the director of the Utah Bureau of Criminal Identification of the
756 unauthorized use.

757 (13) (a) Subject to Subsection (13)(b), a qualifying entity or an entity described in
758 Subsection (2)(b) may request that the division register fingerprints taken for the purpose of
759 conducting current and future criminal background checks under this section with:

760 (i) the WIN Database rap back system, or any successor system;

761 (ii) the FBI Rap Back System; or

762 (iii) a system maintained by the division.

763 (b) A qualifying entity or an entity described in Subsection (2)(b) may only make a
764 request under Subsection (13)(a) if the entity:

765 (i) has the authority through state or federal statute or federal executive order;

766 (ii) obtains a signed waiver from the individual whose fingerprints are being registered;

767 and

768 (iii) establishes a privacy risk mitigation strategy to ensure that the entity only receives
769 notifications for individuals with whom the entity maintains an authorizing relationship.

770 (14) The division is authorized to submit fingerprints to the FBI Rap Back System to
771 be retained in the FBI Rap Back System for the purpose of being searched by future
772 submissions to the FBI Rap Back System, including latent fingerprint searches.

773 (15) (a) The division shall impose fees set in accordance with Section 63J-1-504 for
774 the applicant fingerprint card, name check, and to register fingerprints under Subsection
775 (13)(a).

776 (b) Funds generated under this Subsection (15) shall be deposited into the General
777 Fund as a dedicated credit by the department to cover the costs incurred in providing the
778 information.

779 (c) The division may collect fees charged by an outside agency for services required
780 under this section.

781 (16) For the purposes of conducting a criminal background check authorized under
782 Subsection (2)(h) [~~or (2)(i)~~, (i), or (j)], the Department of Human Resource Management, in
783 accordance with Title 67, Chapter 19, Utah State Personnel Management Act, and the
784 governor's office shall have direct access to criminal background information maintained under
785 Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

786 Section 19. **Effective date.**

787 This bill takes effect on November 1, 2019.