

# HB0052S01 compared with HB0052

~~{deleted text}~~ shows text that was in HB0052 but was deleted in HB0052S01.

Inserted text shows text that was not in HB0052 but was inserted into HB0052S01.

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Representative Craig Hall proposes the following substitute bill:

## REMOTE NOTARIZATION STANDARDS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Craig Hall**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

~~{Committee Note:~~

~~—The Government Operations Interim Committee recommended this bill.~~

~~{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:

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

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{None}~~ This bill provides a special effective date.

### Utah Code Sections Affected:

AMENDS:

46-1-2, as last amended by Laws of Utah 2017, Chapter 259

46-1-3, as last amended by Laws of Utah 2017, Chapter 259

46-1-4, as last amended by Laws of Utah 2017, Chapter 259

46-1-6, as repealed and reenacted by Laws of Utah 2017, Chapter 259

46-1-6.5, as enacted by Laws of Utah 2017, Chapter 259

46-1-10, as repealed and reenacted by Laws of Utah 1998, Chapter 287

46-1-12, as last amended by Laws of Utah 1998, Chapter 287

46-1-13, as repealed and reenacted by Laws of Utah 1998, Chapter 287

46-1-14, as last amended by Laws of Utah 2006, Chapter 21

46-1-15, as last amended by Laws of Utah 2017, Chapter 259

46-1-16, as last amended by Laws of Utah 2017, Chapter 259

46-1-17, as repealed and reenacted by Laws of Utah 1998, Chapter 287

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46-1-18, as last amended by Laws of Utah 2017, Chapter 259

46-1-21, as last amended by Laws of Utah 2003, Chapter 136

53-10-108, as last amended by Laws of Utah 2018, Chapters 417 and 427

ENACTS:

46-1-3.5, Utah Code Annotated 1953

46-1-3.6, Utah Code Annotated 1953

46-1-3.7, Utah Code Annotated 1953

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

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

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

As used in this chapter:

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

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

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

(a) to empower to perform notarial acts; or

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

~~[(3)]~~ (4) "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.

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

~~[(4)]~~ (6) "Electronic seal" means an electronic version of the seal described in Section 46-1-16, that conforms with rules made under Subsection 46-1-3.7(1)(d), that a remote notary may attach to a notarial certificate to complete a remote notarization.

~~[(4)]~~ ~~[(5)]~~ (7) "Electronic signature" means the same as that term is defined in Section 46-4-102.

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~~(6)~~8 "In the presence of the notary" means that an individual:

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

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

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

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

~~(5)~~ ~~(7)~~9 "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)~~ ~~(8)~~10 "Notarial act" or "notarization" means an act that a notary is authorized to perform under Section 46-1-6.

~~(7)~~ ~~(9)~~11 "Notarial certificate" means 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 official seal.

~~(8)~~ ~~(10)~~12 (a) "Notary" means ~~[any person]~~ an individual commissioned to perform notarial acts under this chapter.

(b) "Notary" includes a remote notary.

~~(9)~~ ~~(11)~~13 "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)~~ ~~(12)~~14 "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.

~~(13)~~15 (a) "Official seal" means the seal described in Section 46-1-16 that a notary may attach to a notarial certificate to complete a notarization.

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

~~[(11)]~~ ~~(14;16)~~ "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.

~~(15;17)~~ "Remote notarization" means a notarial act performed by a remote notary in accordance with this chapter for an individual who is not in the physical presence of the remote notary at the time the remote notary performs the notarial act.

~~(16;18)~~ "Remote notary" means a notary that holds an active remote notary certification under Section 46-1-3.5.

~~[(12)]~~ ~~(17;19)~~ (a) "Satisfactory evidence of identity" means:

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

~~[(i)]~~ (A) subject to Subsection (17;19)(b), valid personal identification with the individual's photograph, signature, and physical description that the United States government, any state within the United States, or a foreign government issues;

~~[(ii)]~~ (B) subject to Subsection (17;19)(b), a valid passport that any nation issues; or

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

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

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

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

(b) "Satisfactory evidence of identity," for a remote notarization, requires the identification described in Subsection (17;19)(a)(i)(A) or passport described in Subsection (17;19)(a)(i)(B) to be verified through public or proprietary data sources in accordance with rules made under Section 46-1-3.7.

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

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

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

[(13)] ~~(18)~~ (20) "Signature witnessing" means a notarial act in which an individual:

(a) appears in ~~[person before a]~~ the presence of the 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)]~~ (4), and subject to Section 46-1-3.5, the lieutenant governor shall commission as a notary any qualified person who submits an application in accordance with this chapter.

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

(a) be at least 18 years old;

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

(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, that includes:

(i) the individual's:

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

(B) residential address;

(C) 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) an indication that the individual has passed the examination described in

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Subsection ~~[(5)]~~ [(6)]; and

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

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

(ii) have permanent resident status under Section 245 of the Immigration and Nationality Act;

~~— (3) } [-]; and~~

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

(3) (a) The lieutenant governor shall:

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

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

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

(b) The Department of Human Resource Management shall:

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

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

~~[(3)]~~ [(4)] 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 examination described in Subsection ~~[(5)]~~ [(6)].

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

(i) may perform notarial acts in any part of the state for a term of four years, unless the

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person resigns or the commission is revoked or suspended under Section 46-1-19~~[-]~~; and

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

(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)]~~ [(6)] (a) Each applicant for a notarial commission shall take an examination that the lieutenant governor approves and submit the examination to a testing center that the lieutenant governor designates for purposes of scoring the examination.

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

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

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

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

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

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

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

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

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

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

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



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

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

(c) provide the applicant's email address.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) perform a remote notarization; and

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

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

(c) dynamic knowledge-based authentication or biometric data analysis that a remote notary may use to establish satisfactory evidence of identity under Subsection 46-1-2(17)(a)(ii);  
and

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

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

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

### **46-1-4. Bond.**

(1) A notarial commission is not effective until:

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

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

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

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

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

(a) the notary named in the remote notary certification files with the lieutenant governor evidence that the notary has obtained \$5,000 of bond coverage, in addition to the

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bond coverage described in Subsection (1)(a); ~~a \$5,000 bond with the lieutenant governor~~,  
that:

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

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

(b) the lieutenant governor approves the ~~oath and~~ additional bond coverage described in Subsection (2)(a).

Section 7. Section **46-1-6** is amended 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;
- (d) a copy certification; and
- (e) 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~~ individual 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 8. Section **46-1-6.5** is amended to read:

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

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

(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

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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]~~ Notary's Official Seal) \_\_\_\_\_

Notary Signature".

(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]~~ Notary's Official Seal) \_\_\_\_\_

Notary Signature".

(4) An affidavit for a copy certification 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), 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]~~ Notary's Official Seal) \_\_\_\_\_

Notary Signature".

(5) An affidavit for a signature witnessing that is in substantially the following form is

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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] Notary's Official Seal) \_\_\_\_\_

Notary Signature".

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

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

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

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

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

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

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

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

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

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

(d) (iv) [oaths or affirmations] for an oath or affirmation without a signature, [\$5]

\$10 per person[-]; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) the type of notarial act;

(c) [~~a~~] the type title, or a description of the document, **electronic record**, or proceeding

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that is the subject of the notarial act;

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

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

(i) a statement that the person is [“]personally known[”] to the notary;

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

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

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

~~— (f) a copy of the audio and video recording described in Subsection 46-1-3.6(3);~~;~~ and (f)(g)~~ the fee, if any, the notary charged for the notarial act.

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

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

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

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

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

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

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

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

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

(2) (a) A remote notary shall:

(i) ensure that the electronic journal and electronic recording described in Section ~~{46-1-113}~~46-1-14 that is maintained by the remote notary is a secure and authentic record of the remote notarizations that the notary performs;

(ii) maintain a backup electronic journal ~~{, including a backup of the audio and video recordings described in Subsection 46-1-3.6(3)}~~ and electronic recording; and

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

(b) (i) A remote notary may designate as a custodian of the remote notary's electronic journal and electronic recording described in Section ~~{46-1-113}~~46-1-14:

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

(B) except as provided in Subsection (2)(b)(iii), an electronic repository that grants the remote notary sole access to the electronic journal and ~~{that, unless required under a court order,}~~electronic recording and does not allow the person who operates the electronic repository or any other person to access the journal, ~~{for}~~ information in the journal, or the electronic recording for any purpose.

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

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

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

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

(C) if required under a court order.

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



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

### 46-1-16. Official signature -- Official seal -- Destruction of seal -- Unlawful use of seal -- Criminal penalties.

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

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

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

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

(ii) Each official seal used for a remote notarization shall be rendered in black.

(d) (i) A remote notary may allow a person that provides an electronic seal to the remote notary under Section 46-1-17 to act as guardian over the electronic seal.

(ii) Except as provided in Subsection (2)(d)(iii), a guardian described in Subsection (2)(d)(i) shall store the seal in a secure manner that prevents any person from:

(A) accessing the seal, other than the guardian and the remote notary named on the seal; or

(B) using the seal to perform a notarization, other than the remote notary named on the seal.

(iii) A guardian that a notary designates under Subsection (2)(d)(i) may access and use the seal of the notary:

(A) for a purpose solely related to completing, in accordance with this chapter, the notarization, by the notary, for which the seal is accessed or used;

(B) for a purpose solely related to complying with the requirements to obtain, store, and protect the seal under this chapter; or

(C) if required under a court order.

(3) (a) A notary shall obtain a new official seal:

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(i) when the notary receives a new commission; or

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

(b) ~~[A]~~ Subject to Subsection (3)(c), a notary shall affix the official seal [impression] near the notary's official signature on a notarial certificate and shall include a sharp, legible, and photographically reproducible ~~[ink impression of the notarial]~~ rendering of the official 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) 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 official seal.

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

(i) the notarial certificate; or

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

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

(5) A notary shall affix the ~~[notarial]~~ official seal 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]~~ an official seal independent of a notarial certificate.

(7) ~~[A]~~ Except for a notarial certificate that is completed as a part of a remote notarization, 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:

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- (a) the notary signs the notarial certificate in permanent ink; and
- (b) the following appear below or immediately adjacent to the notary's signature:
  - (i) the notary's 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.

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

(a) the notary's 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)".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 16. 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] ~~[(A)]~~ misdemeanor, if not otherwise a criminal offense under this code, for:

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

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

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

### **46-1-21. Resignation.**

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

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

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

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

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

(1) As used in this section:

(a) "FBI Rap Back System" means the rap back system maintained by the Federal Bureau of Investigation.

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

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

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

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

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

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

(c) a qualifying entity for employment background checks for their own employees and

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persons who have applied for employment with the qualifying entity;

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

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

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

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

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

(i) employees;

(ii) applicants for employment;

(iii) volunteers; and

(iv) contract employees;

(i) governor's office for the purpose of conducting a background check on the following individuals:

(i) cabinet members;

(ii) judicial applicants; and

(iii) members of boards, committees, and commissions appointed by the governor;

(j) the office of the lieutenant governor for the purpose of conducting a background check on an individual applying to be a notary public under Section 46-1-3.

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

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

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

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security of the data.

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

(b) The waiver shall notify the signee:

(i) that a criminal history background check will be conducted;

(ii) who will see the information; and

(iii) how the information will be used.

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

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

(ii) the fee required by Subsection (15)[(a)(f)].

(d) A qualifying entity under Subsection (2)(c), state agency, or other agency or individual described in Subsections (2)(d) through (g) that submits a request for a WIN database check to the bureau shall provide to the bureau:

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

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

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

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

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

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

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

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

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### liability.

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

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

(ii) respond to any information received.

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

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

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

(b) A criminal history provided to an agency pursuant to Subsection (2)(f) may be provided by the agency to the individual who is the subject of the history, another licensed child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an adoption.

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

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

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

(a) that have been declined for prosecution;

(b) that have been dismissed; or



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(c) regarding which a person has been acquitted.

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

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

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

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

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

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

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

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

(a) shall be charged for access; and

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

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

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

(b) A person who discovers or becomes aware of any unauthorized use of records created or maintained, or to which access is granted by the division shall inform the

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commissioner and the director of the Utah Bureau of Criminal Identification of the unauthorized use.

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

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

(ii) the FBI Rap Back System; or

(iii) a system maintained by the division.

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

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

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

and

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

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

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

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

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

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

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Section 19. Effective date.

This bill takes effect on November 1, 2019.