

ELECTRONIC NOTARIZATION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Calvin R. Musselman

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill modifies provisions related to electronic notarizations.

Highlighted Provisions:

This bill:

- provides for the electronic notarization of documents allowed to be recorded electronically in a county recorder's office;
- modifies definitions applicable to those electronic notarizations; and
- modifies a provision authorizing the Office of the Lieutenant Governor to adopt rules to address electronic notarizations.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

46-1-2, as last amended by Laws of Utah 2022, Chapter 158

46-1-3.6, as enacted by Laws of Utah 2019, Chapter 192

46-1-3.7, as enacted by Laws of Utah 2019, Chapter 192

46-1-14, as last amended by Laws of Utah 2019, Chapter 192

46-1-17, as last amended by Laws of Utah 2019, Chapter 192

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:

- 29 (1) "Acknowledgment" means a notarial act in which a notary certifies that a signer, whose
30 identity is personally known to the notary or proven on the basis of satisfactory
31 evidence, has admitted, in the presence of the notary, to voluntarily signing a document
32 for the document's stated purpose.
- 33 (2) "Before me" means that an individual appears in the presence of the notary.
- 34 (3) "Commission" means:
- 35 (a) to empower to perform notarial acts; or
- 36 (b) the written document that gives authority to perform notarial acts, including the
37 Certificate of Authority of Notary Public that the lieutenant governor issues to a
38 notary.
- 39 (4) "Copy certification" means a notarial act in which a notary certifies that a photocopy is
40 an accurate copy of a document that is neither a public record nor publicly recorded.
- 41 (5) "Electronic notarization" means:
- 42 (a) a remote notarization; or
- 43 (b) a notarization:
- 44 (i) in an electronic format;
- 45 (ii) of a document that may be recorded electronically under Subsection 17-21-18.5
46 (5); and
- 47 (iii) that conforms with rules made under Section 46-1-3.7.
- 48 [~~(5)~~] (6) "Electronic recording" means the audio and video recording, described in
49 Subsection 46-1-3.6(3), of a remote notarization.
- 50 [~~(6)~~] (7) "Electronic seal" means an electronic version of the seal described in Section
51 46-1-16, that conforms with rules made under Subsection 46-1-3.7(1)(d), that a [~~remote~~]
52 notary may attach to a notarial certificate to complete [~~a remote~~] an electronic
53 notarization.
- 54 [~~(7)~~] (8) "Electronic signature" means the same as that term is defined in Section 46-4-102.
- 55 [~~(8)~~] (9) "In the presence of the notary" means that an individual:
- 56 (a) is physically present with the notary in close enough proximity to see and hear the
57 notary; or
- 58 (b) communicates with a remote notary by means of an electronic device or process that:
- 59 (i) allows the individual and remote notary to communicate with one another
60 simultaneously by sight and sound; and
- 61 (ii) complies with rules made under Section 46-1-3.7.
- 62 [~~(9)~~] (10) "Jurat" means a notarial act in which a notary certifies:

- 63 (a) the identity of a signer who:
- 64 (i) is personally known to the notary; or
- 65 (ii) provides the notary satisfactory evidence of the signer's identity;
- 66 (b) that the signer affirms or swears an oath attesting to the truthfulness of a document;
- 67 and
- 68 (c) that the signer voluntarily signs the document in the presence of the notary.
- 69 ~~[(10)]~~ (11) "Notarial act" or "notarization" means an act that a notary is authorized to
- 70 perform under Section 46-1-6.
- 71 ~~[(11)]~~ (12) "Notarial certificate" means the affidavit described in Section 46-1-6.5 that is:
- 72 (a) a part of or attached to a notarized document; and
- 73 (b) completed by the notary and bears the notary's signature and official seal.
- 74 ~~[(12)]~~ (13) (a) "Notary" means an individual commissioned to perform notarial acts
- 75 under this chapter.
- 76 (b) "Notary" includes a remote notary.
- 77 ~~[(13)]~~ (14) "Oath" or "affirmation" means a notarial act in which a notary certifies that a
- 78 person made a vow or affirmation in the presence of the notary on penalty of perjury.
- 79 ~~[(14)]~~ (15) "Official misconduct" means a notary's performance of any act prohibited or
- 80 failure to perform any act mandated by this chapter or by any other law in connection
- 81 with a notarial act.
- 82 ~~[(15)]~~ (16) (a) "Official seal" means the seal described in Section 46-1-16 that a notary
- 83 may attach to a notarial certificate to complete a notarization.
- 84 (b) "Official seal" includes an electronic seal.
- 85 ~~[(16)]~~ (17) "Personally known" means familiarity with an individual resulting from
- 86 interactions with that individual over a period of time sufficient to eliminate every
- 87 reasonable doubt that the individual has the identity claimed.
- 88 ~~[(17)]~~ (18) "Remote notarization" means a notarial act performed by a remote notary in
- 89 accordance with this chapter for an individual who is not in the physical presence of the
- 90 remote notary at the time the remote notary performs the notarial act.
- 91 ~~[(18)]~~ (19) "Remote notary" means a notary that holds an active remote notary certification
- 92 under Section 46-1-3.5.
- 93 ~~[(19)]~~ (20) (a) "Satisfactory evidence of identity" means:
- 94 (i) for both an in-person and remote notarization, identification of an individual based
- 95 on:
- 96 (A) subject to Subsection ~~[(19)(b)]~~ (20)(b), valid personal identification with the

97 individual's photograph, signature, and physical description that the United
 98 States government, any state within the United States, or a foreign government
 99 issues;

100 (B) subject to Subsection [~~(19)(b)~~] (20)(b), a valid passport that any nation issues;
 101 or

102 (C) the oath or affirmation of a credible person who is personally known to the
 103 notary and who personally knows the individual; and

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

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

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

111 (b) "Satisfactory evidence of identity," for a remote notarization, requires the
 112 identification described in Subsection [~~(19)(a)(i)(A)~~] (20)(a)(i)(A) or passport
 113 described in Subsection [~~(19)(a)(i)(B)~~] (20)(a)(i)(B) to be verified through public or
 114 proprietary data sources in accordance with rules made under Section 46-1-3.7.

115 (c) "Satisfactory evidence of identity" does not include:

116 (i) a driving privilege card under Subsection 53-3-207(12); or

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

118 [~~(20)~~] (21) "Signature witnessing" means a notarial act in which an individual:

119 (a) appears in the presence of the notary and presents a document;

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

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

123 Section 2. Section **46-1-3.6** is amended to read:

124 **46-1-3.6 . Remote notarization procedures.**

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

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

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

- 131 (i) allows the individual and remote notary to communicate with one another
 132 simultaneously by sight and sound; and
 133 (ii) complies with rules made under Section 46-1-3.7; and
 134 (b) requiring the individual to transmit to the remote notary an image of a form of
 135 identification described in Subsection [~~46-1-2(19)(a)(i)(A)~~] 46-1-2(20)(a)(i)(A) or
 136 passport described in Subsection [~~46-1-2(19)(a)(i)(B)~~] 46-1-2(20)(a)(i)(B) that is of
 137 sufficient quality for the remote notary to establish satisfactory evidence of identity.
 138 (3) (a) A remote notary shall create an audio and video recording of the performance of
 139 each remote notarization and store the recording in accordance with Sections 46-1-14
 140 and 46-1-15.
 141 (b) A remote notary shall take reasonable steps, consistent with industry standards, to
 142 ensure that any non-public data transmitted or stored in connection with a remote
 143 notarization performed by the remote notary is secure from unauthorized interception
 144 or disclosure.
 145 (4) Notwithstanding any other provision of law, a remote notarization lawfully performed
 146 under this chapter satisfies any provision of state law that requires an individual to
 147 personally appear before, or be in the presence of, a notary at the time the notary
 148 performs a notarial act.

149 Section 3. Section **46-1-3.7** is amended to read:

150 **46-1-3.7 . Rulemaking authority for electronic notarization.**

- 151 (1) The director of elections in the Office of the Lieutenant Governor may make rules in
 152 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding
 153 standards for and types of:
 154 (a) electronic software and hardware that [~~a remote notary may use to~~]:
 155 (i) a notary may use to perform [~~a remote~~] an electronic notarization; and
 156 (ii) a remote notary may use to keep an electronic journal under Section 46-1-13;
 157 (b) public and proprietary data sources that a remote notary may use to establish
 158 satisfactory evidence of identity under Subsection [~~46-1-2(19)(b)~~] 46-1-2(20)(b);
 159 (c) dynamic knowledge-based authentication or biometric data analysis that a remote
 160 notary may use to establish satisfactory evidence of identity under Subsection [~~46-1-2~~
 161 ~~(19)(a)(ii)~~] 46-1-2(20)(a)(ii); and
 162 (d) electronic seals a [~~remote~~] notary may use to complete an electronic notarial
 163 certificate.
 164 (2) When making a rule under this section, the director of elections in the Office of the

165 Lieutenant Governor shall review and consider standards recommended by one or more
166 national organizations that address the governance or operation of notaries.

167 Section 4. Section **46-1-14** is amended to read:

168 **46-1-14 . Entries in journal -- Required information.**

- 169 (1) A notary may, for each notarial act the notary performs, and a remote notary shall, for
170 each notarial act the remote notary performs remotely, record the following information
171 in the journal described in Section 46-1-13 at the time of notarization:
- 172 (a) the date and time of day of the notarial act;
 - 173 (b) the type of notarial act;
 - 174 (c) the type title, or a description of the document, electronic record, or proceeding that
175 is the subject of the notarial act;
 - 176 (d) the signature and printed name and address of each individual for whom a notarial
177 act is performed;
 - 178 (e) the evidence of identity of each individual for whom a notarial act is performed, in
179 the form of:
 - 180 (i) a statement that the person is personally known to the notary;
 - 181 (ii) a description of the identification document and the identification document's
182 issuing agency, serial or identification number, and date of issuance or expiration;
 - 183 (iii) the signature and printed name and address of a credible witness swearing or
184 affirming to the person's identity; or
 - 185 (iv) if used for a remote notarization, a description of the dynamic knowledge-based
186 authentication or biometric data analysis that was used to provide satisfactory
187 evidence of identity under Subsection [~~46-1-2(19)(a)(ii)~~] 46-1-2(20)(a)(ii); and
 - 188 (f) the fee, if any, the notary charged for the notarial act.
- 189 (2) A notary may record in the journal a description of the circumstances under which the
190 notary refused to perform or complete a notarial act.
- 191 (3) (a) A remote notary shall include with the journal a copy of the electronic recording
192 of the remote notarization.
- 193 (b) The electronic recording is not a public record and is not a part of the notary's journal.
- 194 (4) A remote notary shall maintain, or ensure that a person that the notary designates as a
195 custodian under Subsection 46-1-15(2)(b)(i) maintains, for a period of five years, the
196 information described in Subsections (1) and (3) for each remote notarization the notary
197 performs.

198 Section 5. Section **46-1-17** is amended to read:

199 **46-1-17 . Obtaining official seal.**

200 (1) A person may not provide an official seal to an individual claiming to be a notary, unless
201 the individual presents a copy of the individual's notarial commission, attached to a notarized
202 declaration substantially as follows:

203 Application for Notary's Official Seal

204 I, _____ (name of individual requesting seal), declare that I am a notary
205 public duly commissioned by the state of Utah with a commission starting date of
206 _____, a commission expiration date of _____, and a commission number of
207 _____ . As evidence, I attach to this statement a copy of my commission.

208 (2) (a) Except as provided in Subsection (2)(b), an individual may not create, obtain, or
209 possess an electronic seal unless[-] :

210 (i) the individual is a[-remote] notary[-] ; and

211 (ii) the electronic seal complies with the standards established by rule under
212 Subsection 46-1-3.7(1)(d).

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

216 (3) A person who provides, creates, obtains, or possesses an official seal in violation of this
217 section is guilty of a class B misdemeanor.

218 Section 6. **Effective date.**

219 This bill takes effect on May 1, 2024.